TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 592.

JOHN BINGHAM, APPELLANT,

vs.

JOHN J. BRADLEY, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED AUGUST 11, 1915.

(24,875)

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a In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 32179.

In the matter of JOHN BINGHAM, arrested, detained and restrained of his liberty pursuant to the warrant or mittimus of the commissioner of said court upon the application of the British Consul at Chicago for the extradition of said petitioner under the treaties between the United States and Great Britain.

Messrs. O'Donnell & Toolen and Mr. William Dillon, Attorneys for Petitioner.

Messrs. Bulkley, More & Tallmadge, Attorneys for the Government asking for the extradition of petitioner, John Bingham.

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable F. A. Geiger, United States District Judge for the Eastern District of Wisconsin, sitting by designation in the District Court of the United States for the said Northern District of Illinois, on Wednesday, the seventh day of July, being one of the days of the July Term of said court, begun Monday, the fifth day thereof, in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States of America the one hundred and fortieth year.

Present: Honorable F. A. Geiger, District Judge, presiding; John J. Bradley, United States Marshal for said District; T. C. MacMillan, clerk of said court.

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

32179.

In the matter of JOHN BINGHAM, arrested, detained and restrained of his liberty pursuant to the warrant or mittimus of the commissioner of said court upon the application of the British Consul at Chicago for the extradition of said defendant under the treaties between the United States and Great Britain.

Be it remembered, That heretofore to-wit: on the twenty-second day of June, 1915, came the petitioner in the above entitled cause by his attorney and filed in the clerk's office of said Court, his certain

Petition for Writ of Habeas Corpus in words and figures following to-wit:

3 *Petition for Writ of Habeas Corpus.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the District Court of the United States in and for said District and Division.

32179.

In the matter of JOHN BINGHAM, arrested, detained and restrained of his liberty pursuant to the warrant or mittimus of the commissioner of said court upon the application of the British Consul at Chicago for the extradition of said defendant under the treaties between the United States and Great Britain.

Petition for Writ of Habeas Corpus.

John Bingham, above named, humbly petitioning showeth unto the Court as follows:

1. That your petitioner is imprisoned and restrained of his liberty in the County Jail of Cook County in the City of Chicago and State of Illinois.

2. That your petitioner is so imprisoned and restrained of his liberty under and by virtue of a certain mittimus or warrant of commitment signed and issued by Lewis F. Mason, Commissioner in and for said Northern District of Illinois, Eastern Division, of which mittimus or warrant a copy is annexed to this petition and marked Exhibit "A," and made a part hereof.

4 3. That your petitioner is so imprisoned and restrained of his liberty and is in custody as aforesaid, under and by virtue of the authority of the United States.

4. That your petitioner is not so imprisoned and restrained of his liberty by virtue of the final judgment or decree of any competent tribunal of civil or criminal jurisdiction, or by virtue of any execution issued upon or under any such judgment or decree.

5. That said imprisonment and restraint of your petitioner are illegal and in violation of the Constitution, laws and treaties of the United States, and that the nature or grounds of such illegality are as hereinafter set forth.

6. That the grounds, or pretended grounds, of such imprisonment and restraint of your petitioner are as follows, to-wit:

That on the 3rd day of April A. D. 1915, Horace D. Nugent, the British Consul General at Chicago subscribed and swore to and caused to be filed or presented to the said Commissioner Mason a certain complaint, which complaint did charge that the petitioner herein had within the period of one year prior to the date thereof,

to-wit, during the month of February, A. D., 1915, been guilty of the crime of receiving and retaining in his possession money to the amount of Fifteen hundred Dollars ($1,500.00), to-wit, bills of the Bank of Montreal, and the property of said Bank of Montreal, there and then knowing the same to have been stolen. That the said petitioner was a fugitive from justice from the District of Montreal, Province of Quebec and Dominion of Canada; that the crime of which the said petitioner was so accused was an offense *with* the treaties between the United States and Great Britain; and
5 that deponent's information and belief were based upon certain documents and depositions in said complaint specified and referred to. Which said complaint is set forth in the second Exhibit to this petition and made a part hereof and marked Exhibit "B."

7. That to substantiate and make good the charges made in said complaint the said British Consul at Chicago relied upon certain documents and certain depositions or affidavits, all of which are set forth in the third Exhibit to this petition, which is made a part hereof and marked Exhibit "C," and the said British Consul further relied upon certain oral testimony taken before said Commissioner at Chicago, which said testimony so far as material, is abstracted and set forth in the fourth Exhibit to this petition, which is marked Exhibit "D" and made a part of this petition; that said affidavits and documentary testimony tended to show:

(1) That in the month of September, 1911, a branch of the Bank of Montreal at New Westminster, British Columbia, was broken into and a large sum of money in bills of the said bank was stolen.

(2) That in the month of February, 1915, the defendant therein went to the store of one Alfred Eaves, a jeweler, in the City of Montreal, and bought a diamond ring for which he paid the sum of $250 in five dollar bills of the Bank of Montreal.

This fact was testified to in one affidavit made by one Louis Bessette. There is no other evidence, written or oral, tending to show that the defendant made any attempt to dispose of any bills of said bank in the City of Montreal.

(3) That the bills so paid for said ring included a number of bills that were stolen from the bank at New Westminster, on
6 the occasion of the burglary above referred to.

(4) That one George Wakefield (said to have several aliases) did at two different places and two different times, in said City of Montreal and in said month of February, 1915, dispose of, or attempt to dispose of certain bills of said Bank of Montreal, some of which were bills that were stolen on the occasion of said burglary.

That said oral testimony so taken before said Commissioner as aforesaid, tended to show:

(1) That the defendant and Wakefield were seen together by detectives in Montreal and in places near to Montreal, and close to the places where the attempts were made to dispose of said bills as aforesaid, about the times that the affidavits above referred to showed that such attempts were made.

(2) That early in the month of March, 1915, the defendant and Wakefield were in Chicago, and that each of them there tried to dispose of certain Canadian bank bills. That some of the bills, which Wakefield tried to dispose of, were bills that were stolen on the occasion of the burglary.

That said documents and deposition and affidavits above referred to and hereto annexed, and said oral testimony above summarized and abstracted as aforesaid, constituted the whole of the testimony offered and relied upon on the hearing of the said application for extradition before the said Commissioner.

That said Commissioner was of the opinion that a case for extradition had been made out under the treaties between Great Britain and the United States and the Federal Statutes, and so certified to the Secretary of State, a copy of which certificate is hereto annexed and marked Exhibit "E" and made a part of this petition.

7 That your petitioner is informed and believes, and so states the fact to be, that the Honorable Robert Lansing, Secretary of State Ad Interim, has since approved of said conclusion of said Commissioner and has issued his warrant for the extradition of said defendant.

That said documents and affidavits, copies of which are hereto annexed as aforesaid, and said oral testimony above summarized and abstracted as aforesaid, constitute the entire record made upon said hearing before said Commissioner, save and except a certain motion and affidavit for change of venue, and certain motions to dismiss made at the close of the defendant's case and at the close of all the evidence, which motions and affidavit are irrelevant, so far as regards the questions raised and the points relied upon in this petition. Which record was duly transmitted to the Secretary of State, together with said recommendation for the extradition of the petitioner as aforesaid, and which record as your petitioner is informed and believes, remains in the office of said Secretary of State.

8. That, save as stated in this petition, and save as appears from the depositions, documents and testimony above referred to, no ground whatever exists, or is claimed to exist for the said imprisonment and detention of your petitioner.

Your petitioner claims that such his said imprisonment and detention is illegal upon the following grounds, to-wit:

(1) That the information of the British Consul does not charge that the offense therein referred to was committed in the jurisdiction to which extradition is sought.

(2) That the charge made in the said information of the British Consul hereinbefore referred to and in part set forth does not charge any offense which is extraditable under any treaty between Great Britain and the United States of America.

8 (3) That the depositions and documents and oral testimony relied on by the said British Consul do not show, or tend to show that probable cause exists for believing that the petitioner did commit in Montreal, or anywhere else in the Dominion of Canada, an act which is punishable as a crime under the laws of

the said District of Montreal and Dominion of Canada, and which is punishable as a crime under the laws of the State of Illinois, United States of America, and which is extraditable under any treaty between Great Britain and the United States of America.

(4) That, conceding the truth of the facts testified to in said depositions and affidavit and oral testimony relied upon by the British Consul as aforesaid, said facts do not make it reasonably probable that the petitioner was guilty anywhere in the Dominion of Canada of the extraditable crime which comes nearest to being the crime that is charged in the said complaint of said British Consul.

(5) That there was not before said Commissioner any legal or competent evidence tending to make it reasonably probable that the petitioner had committed in the Dominion of Canada any crime or offense extraditable under the treaties between Great Britain and the United States.

(6) That the documents, depositions and oral testimony so relied on by the British Consul as aforesaid, wholly fail to establish or make reasonably probable, the allegations in said complaint to the effect that the petitioner is a fugitive from justice from the District of Montreal.

(7) That improper and incompetent evidence was admitted upon said hearing before said Commissioner over the objection of the petitioner.

9 9. That no application for writ of Habeas Corpus for the relief herein sought has been made to, or refused, by any other court or judge.

Wherefore, your petitioner prays that a Writ of Habeas Corpus may be granted and issued directed to the Mar*hsall* of the United States for the Northern District of Illinois and the Keeper of the common jail of the County of Cook in said District, directing them and each of them to bring and have the body of your petitioner before this Honorable Court, or any Judge thereof, at a time and place in said writ to be specified to do and receive what shall then and there be considered by the Court concerning your petitioner and concerning the time and cause of the detention of your petitioner, and concerning the said writ, and that your petitioner may be restored to his liberty.

And your petitioner will ever pray, etc.

JOHN BINGHAM, *Petitioner.*

O'DONNELL & TOOLEN &
WILLIAM DILLON,
Attorneys for Petitioner.

STATE OF ILLINOIS,
County of Cook, ss:

John Bingham being duly sworn on oath deposes and says that he is petitioner named in the foregoing petition, and that he has read the foregoing petition, and that the matters and things therein alleged are true, except as to such matters and things as are therein

stated to be alleged on information and belief, and that as to such, he believes them to be true.

JOHN BINGHAM.

Subscribed and sworn to before me this 21st day of June, 1915.

[SEAL.] MARY E. JOYCE,
Notary Public.

10 EXHIBIT A.

Before Lewis F. Mason, U. S. Commissioner.

Northern District of Illinois.

In the Matter of JOHN BINGHAM, alias J. C. BILLINGS, alias JOHN BIGELOW, a Fugitive from Justice.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The President of the United States of America to the Marshal of the Northern District of Illinois, and to his deputies or to any or either of them, and to the keeper of the Cook County Jail in the State of Illinois, Greeting:

Whereas, the above named John Bingham, alias J. C. Billings, alias John Bigelow, having been arrested on the oath of Hon. H. D. Nugent, consul for the Britannic Majesty, for having on or about the 10th day of February, 1915, within the jurisdiction of the Kingdom of Great Britain, to-wit: Canada, committed the crime of receiving and retaining in his possession, money to the amount of $1,500.00, bills of the Bank of Montreal, and the property of the Bank of Montreal, a corporation, having home office in the City of Montreal, knowing that the said bills had been stolen, the
11 said crime being embraced in a treaty or convention for the extradition of criminals, between the Government of said Kingdom of Great Britain and the Government of the United States of America, and

Whereas, the examination of charged against the said John Bingham, alias J. C. Billings, alias John Bigelow, has been had before me, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, specially authorized by order of the district court to perform all the duties of a commissioner under the extradition laws and treaties of the United States; and it appearing to me, the said commissioner, that there are sufficient grounds to believe said John Bingham, alias J. C. Billings, alias John Bigelow, guilty of the crime as charged, and it being hereby found and adjudged that said John Bingham, alias J. C. Billings, alias John Bigelow, is guilty as charged now, therefore, in the name and by the authority aforesaid.

These are to command you, The Marshal as aforesaid, to commit the said John Bingham, alias J. C. Billings, alias John Bigelow, to the custody of the keeper of the Jail of said Cook County, and to

leave with the Keeper of said jail a certified copy of this writ; and to Command You, The Keeper of the said jail, to receive and keep the said John Bingham, alias J. C. Billings, alias John Bigelow, to abide the order of the Secretary of State of the United States.

Witness My Hand and Seal, this 19th day of May, A. D. 1915.

(Signed) LEWIS F. MASON,
[SEAL.] *United States Commissioner, Northern District of Illinois.*

A true copy.

Teste.
LEWIS F. MASON,
United States Commissioner.

12 EXHIBIT B.

Before Lewis F. Mason, Esq., United States Commissioner, etc.

In the Matter of the Application for the Extradition of JOHN BINGham, alias J. C. Billings, alias John Bigelow, under the Treaties between the United States and Great Britain.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, Illinois, United States of America, being first duly sworn, on his oath deposes and says

That he is informed and believes and so states the fact to be that one John Bingham, alias J. C. Billings, alias John Bigelow, has within the period of one year prior to the date hereof, to-wit, during the month of February, 1915, been guilty of the crime of receiving and retaining in his possession money to the amount of fifteen hundred dollars ($1,500.00) to-wit, bills of the Bank of Montreal and the property of the said bank of Montreal, a
13 corporation, having its head office in the City of Montreal, Province of Quebec and Dominion of Canada in His Britannic Majesty's domain, then and there knowing the same to have been stolen.

That a warrant has been issued by the Police Magistrate and Judge of the Sessions of the Peace of the City of Montreal, in the District of Montreal, in the Province of Quebec and Dominion of Canada, within the jurisdiction of His Britannic Majesty, for the apprehension of said John Bingham, alias J. C. Billings, alias John Bigelow for the crime of receiving and retaining in his possession money to the amount of about Fifteen Hundred Dollars ($1,500.00), to-wit: the bills of the Bank of Montreal and the property of said Bank of Montreal, a corporation, having its head office in the City of Montreal aforesaid, the said accused then and there knowing that the said bills had been stolen.

That said John Bingham alias J. C. Billings alias John Bigelow

is guilty of the indictable offense of receiving money, knowing the same to have been stolen; that the said John Bingham alias J. C. Billings alias John Bigelow, is a fugitive from justice from the District of Montreal, Province of Quebec and Dominion of Canada, and is now within the territory of the United States, as this affiant is informed and that the offense of which the said John Bingham alias J. C. Billings alias John Bigelow is charged is an offense within the treaties between the United States and Great Britain.

That this deponent's information is based upon duly authenticated copies of a warrant issued by the Police Magistrate and Judge of the Sessions of the Peace of the City of Montreal, District of Montreal, Province of Quebec and Dominion of Canada, and of the complaint or information upon which the warrant was issued, and certain depositions of witnesses which are herewith submitted to be filed with this affidavit, and upon other papers and correspondence.

Wherefore, affiant prays that a warrant for the apprehension of said John Bingham alias J. C. Billings alias John Bigelow be issued that he may be dealt with according to law.

(Signed) HORACE D. NUGENT.

Subscribed and sworn to before me this 3 day of April, 1915.

(Signed) LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention Between This and Any Foreign Government.

I, Lewis F. Mason, U. S. Commissioner, hereby certify that the above and foregoing is a true copy of the complaint and affidavit filed before me in the said matter on the 3rd day of April, 1915.

Witness my hand and seal at the City of Chicago, this 19th day of June, A. D. 1915.

[SEAL.] LEWIS F. MASON,

United States Commissioner.

15 Form No. 36.

EXHIBIT C.

Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.

Consulate General of the United States,

MONTREAL, CANADA, March 27, 1915.

I P. Gorman, Vice Consul of the United States, at Montreal, Canada, hereby certify that the annexed papers being certificate of A. E. Corriveau, clerk of the Crown and Peace, District of Montreal, Canada, certifying to the official character of Husmer, Lanctot; certificate of A. E. Corriveau certifying to the official character of Francois Xavier Choquette; affidavit of Louis E. Bessette; affidavit of John William Timms; affidavit of William H. G. hipps; affidavit of Giulio Galdani; Information and complaint by William Henry Gamble Phipps; warrant in the case of John Bingham, alias J.C. Billings; alias John Bigelow;—signed by F. X. Choquette;—Information and complaint by William Henry Gamble Phillips; Warrant in the case of G. Wakefield alias G. H. Webster, alias G. Webster, alias Hambone, signed by F. X. Choquette; affidavit of John Thomas Hackett.

Proposed to be used upon an application for the extradition from the United States of John Bingham, alias J. C. Billings, alias John Bigelow and G. Wakefield, alias G. H. Webster, alias G. Webster, alias Hambone, charged with the crime of receiving stolen property alleged to have been committed in the City of Montreal, Canada, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes before the Tribunals of the City of Montreal as required by the Act of Congress of August 3, 1882.

In Witness thereof I hereunto sign my name and cause the seal of the Consulate General to be affixed this Twenty seventh day of March nineteen Fifteen.

GORMAN,
Vice Consul American Consulate General,
Montreal, Canada.

Fee No. 372.

16 CANADA,
Province of Quebec,
District of Montreal:

Office of the Clerk of the Peace.

To all to whom these presents shall come:

I, Alphonse E. Corrivean, Esq., Clerk of the Peace and of the Sessions of the Peace for the District of Montreal, do hereby certify that Husmer Lanctot, Esquire, whose name is subscribed to the an-

nexed affidavits of Louis F. Bessette, Isidore Ortenberg, Luigi Rocca, John William Tims, Wm. H. G. Phipps, Giulio Caldani and John Thomas Hackett, sworn to and subscribed before the said Husmer Lanctot, whose initials "H. L." are apposed on the two photographs also hereto annexed and referred to the one in the affidavit of the said Louis E. Bessette, and the other one in the affidavit of said Giulio Caldani, hereto annexed, is and was at the time of the swearing in of said affidavits and of the apposing of said initials, for the district of Montreal in the Province of Quebec, a duly sworn Police Magistrate, and duly authorized as such to receive, take and acknowledge oaths and affidavits, and that full faith and credence are due and ought to be given to his signature and acts in such capacity in all places.

Given Under my Hand and Office Seal at the City of Montreal, this 27th day of March, in the year of our Lord one thousand nine hundred and fifteen.

Two Marginal notes are good and eight words erased null.

A. E. CORRIVEAN,
Clerk of the Peace.

17 CANADA,
Province of Quebec,
District of Montreal:

Office of the Clerk of the Peace.

To all — whom these presents shall come:

I, Alphonse E. Corrivean Esq., Clerk of the Peace and of the Sessions of the Peace for the District of Montreal, do hereby certify that Francois Xavier Choquet, Esquire, whose name is subscribed to the annexed two informations of William Henry Gamble Phipps against G. Wakefield, and John Bingham, sworn to and subscribed before the said Francois Xavier Choquet, whose signature is also apposed to the two warrants of arrest also hereto annexed, is and was at the time of the swearing in of said two informations and the signing thereof and of the two warrants, a duly sworn Police Magistrate and Judge of the Sessions of the Peace, for the District of Montreal and duly authorized as such to receive, take and acknowledge oaths, affidavits and informations and sign warrants of arrest in criminal matters in the Province of Quebec, and that full faith and credence are due and ought to be given to his signature and acts in such capacity in all places.

Given Under My Hand and Office Seal at the City of Montreal, this 27th day of March, in the year of our Lord one thousand nine hundred and fifteen.

Eight words erased are null and two notes in margin are good.

A. E. CORRIVEAN,
Clerk of the Peace.

18 PROVINCE OF QUEBEC,
District of Montreal:

Police Court.

I Louis E. Bessette of the city and district of Montreal Jeweller, being duly sworn do depose and say:—

I am employed by Alfred Eaves, Jeweller of the city of Montreal, 23 Notre Dame Street West.

On the tenth day of February last (1915) a man whom I have since identified by his photograph as John Bingham, which photograph I have initialled and which will be filed with my affidavit, came into the store of Alfred Eaves in the said city of Montreal, and looked at some diamond rings and selected one worth two hundred and fifty dollars ($250) on which he gave me five dollars on account saying he would return later in the day to get the ring and pay the balance. At 3:15 P. M. on the same day he returned, accompanied by another man, and he paid the balance of two hundred and forty five dollars ($245) and took away the ring.

The money which he paid to me for the said ring in the morning of the said 10th day of February was composed of five one dollar Dominion of Canada bills. In the afternoon he paid the balance of two hundred and forty five dollars ($245) which was composed of all new Bank of Montreal five dollar bills which bore the following numbers, 820795, 732434, 824614, 802756, 825163, 802786, 824605, 802798, 824634, 802781, 802799, 824611, 824635, 824637, 802794, 701464, 824616, 802793, 824601, 802789, 824602, 802789, 824612, 802790, 824619, 824636, 732729, 824620, 732730, 802779, 824617, 802782, 802772, 802780, 825180, 802770, 825171, 802755, 802752, 732695, 802761, 802763, 802762, 824959, 701465, 824604, 825168, 825162, 825969.

As soon as the two men had gone from our store Mr. Joseph Kellert, of the Burns International Detective Agency came into the store and asked me if these two men had made a purchase, and if so, what, and I answered yes they had purchased a ring for two hundred and fifty dollars. I showed him the money which I had received from the said John Bingham and he took the numbers of the bills.

The next day we sent these identical bills to the Bank of Montreal in Montreal and they exchanged these new bills for a similar amount, they keeping the bills I had received from the said John Bingham, of which bills I had taken the numbers and description and I afterwards sealed these same bills in an envelope and they are now in the possession and custody of the said Bank of Montreal.

L. E. BESSETTE.

Taken and sworn before me at Montreal this 24th day of March A. D., 1915.

H. LANCTOT,
Police Magistrate.

19 PROVINCE OF QUEBEC,
District of Montreal:

Police Court.

I, Isidore Ortenberg of the city and district of Montreal, Cashier for Rubinovich and Haskell Limited, Importers and Steamship Agents of the city and district of Montreal being duly sworn do depose and say

On the ninth day of February last (1915) a man whom I have since identified by his photograph as George Wakefield alias Webster (which photograph I have initialled and which I file with my affidavit) came into the office of Rubinovich and Haskell Limited and asked me some information about travellers' cheques, giving me his name as C. L. Lane. I explained the matter to him and he asked me to give him four hundred dollars in travellers' cheques. I went to the safe and found we only had two hundred dollars' worth of travellers' cheques on The American Express Company for which he paid me four hundred and two dollars and fifteen cents ($402.15). This money was made up of fifty new five dollar bills on the Bank of Montreal number, 824970, 824995, 824951, 824992, 824654, 829454, 824968, 825057, 825912, 824969, 825029, 814107, 824136, 732696, 702376, 824965, 825962, 814108, 825-24, 814106, 824912, 732737, 824981, 732993, 727730, 8259-9, 725184, 824922, 824657, 814102, 825061, 814143, 825928, 825041, 814530, 825040, 824966, 824967, 702304, 825145, 824953, 701610, 825042, 824964, 824971, 825060, 825058, 825109, 814548, and the balance in bills of different banks making up the total of four hundred and two dollars and fifteen cents.

Next morning Mr. Kellert of the Burns International Detective Agency came in to our office and examined these bills and took the numbers down on a slip of our firm paper.

I afterwards deposited these bills in the Merchants Bank of Canada where our bank account is kept, and on the eleventh day of February these bills were brought by Mr. Kellert of the Burns International Detective Agency and Mr. Frew of the Bank of Montreal, and I checked over the number on the fifty bank of Montreal five dollar bills which said bills I then sealed in an envelope and handed the said envelope to Mr. Frew of the Bank of Montreal where I understand the bills are still kept.

ISIDORE ORTENBERG.

Taken and sworn before me at Montreal this 24th day of March A. D., 1915.

H. LANCTOT,
Police Magistrate.

20 PROVINCE OF QUEBEC,
District of Montreal:

Police Court.

I the undersigned Luigi Rocca, of the city and district of Montreal partner in the firm of Caldani and Rocca, Bankers and Steamship Agents of Montreal duly sworn do depose and say:

On the tenth day of February last (1915) a man whom I have since identified by his photograph as George Wakefield alias Webster (which photograph I have initialed and which I file with my affidavit) came into our office and asked to change Canadian to American currency. My partner Mr. Caldani asked him how much he desired to change and he said he had four hundred dollars. He was told to come back at 2:00 P. M. in the afternoon and the money would be changed for him. When the man left my partner immediately telephoned the Wm. J. Burns International Detective Agency who had given us a circular bearing a description of this man and the Burns Agency sent two of their representatives who remained at our office until about two o'clock when the man I have identified as Wakefield alias Webster, came in with four hundred Canadian currency in bills. Among the Canadian money given in by the said Wakefield alias Webster were fifty new five dollars bills on the Bank of Montreal.

Some time after this man had left Mr. W. D. MacWorth of the Burns Agency came to our office and instructed us to hold the money received from Wakefield alias Webster, but between the time of the latter's departure and the arrival of Mr. MacWorth forty five dollars of these bills had been paid out.

The following morning Mr. J. Kellert of the Burns Agency came to our office and made a list of the numbers of these bills which numbers are as follows: 814133, 825050, 814525, 814148, 702,342, 825947, 824950, 925916, 825965, 814528, 702,340, 824962, 814127, 825122, 814142, 701980, 825053, 814134, 825145, 814126, 825968, 925116, 825034, 825035, 825096, 814150, 824946, 824940, 825143, 732702, 825113, 824879, 814558, 825142, 825080, 814144, 825964, 824957, 825062, giving us a copy of this list.

Later Mr. Kellert returned with a Mr. Frew of the Bank of Montreal and my partner checked over the numbers of the thirty nine Bank of Montreal five dollar bills which said bills were then sealed in an envelope by my partner Mr. Caldani and he handed the said envelope to Mr. Frew of the Bank of Montreal where I understand the bills are still kept.

LUIGI ROCCA.

Taken and sworn before me at Montreal this 25th day of March A. D., 1915.

——— ———,
——— ———.

21 PROVINCE OF QUEBEC,
District of Montreal:

Police Court.

I the undersigned John William Tims, of the City of Montreal Chief of the Bank Note Department at the Head Office of the Bank of Montreal in the said city of Montreal.

In my capacity as Chief of the Bank Note Department of the Bank of Montreal in the said City of Montreal in the month of August nineteen hundred and el-ven (1911) and previous thereto, among other bank bills issued by me and sent addressed to the Bank of Montreal, New Westminster, British Columbia, were the following five dollar bills of the Bank of Montreal numbered 820795, 732434, 824618, 820756, 825163, 802786, 824605, 802798, 824634, 802799, 824611, 824635, 824637, 802794, 701464, 824616, 802783, 824601, 802786, 824602, 802789, 824612, 802790, 824619, 824636, 732729, 824620, 732730, 802779, 824617, 802782, 802772, 802780, 825170, 802770, 825191, 802755, 802752, 732695, 802761, 802763, 802762, 824565, 701465, 824604, 825168, 825162, 825969, 814133, 825050, 814525, 814148, 702342, 825947, 824950, 925916, 825963, 814528, 702340, 824962, 814127, 825122, 814142, 701980, 825053, 814134, 825145, 814125, 825968, 825116, 825034, 825035, 825096, 814150, 824946, 824940, 825143, 732702, 825113, 824979, 814558, 825142, 825080, 814144, 825964, 824957, 825062, 824970, 824995, 824951, 824992, 824654, 829454, 824958, 825057, 825912, 824969, 825029, 814107, 814136, 732696, 702276, 824965, 825962, 814108, 825124, 814106, 824912, 732737, 824981, 732993, 727730, 825909, 825164, 824922, 824657, 825059, 814102, 825061, 814143, 825828, 825041, 814530, 825040, 824966, 824967, 702304, 825945, 824953, 701610, 825042, 824964, 824971, 825060, 825058, 825109, 814548.

In due course I received an acknowledgment from the Manager of the Bank of Montreal in New Westminster, British Columbia, that these bills above enumerated had been duly received by him.

J. W. TIMS.

Taken and sworn to before me at Montreal this 25th day of March A. D., 1915.

H. LANCTOT,
Police Magistrate.

22 PROVINCE OF QUEBEC,
District of Montreal:

Police Court.

I the undersigned William H. G. Phipps of the city of Montreal, Clerk in the head office of the Bank of Montreal at Montreal being duly sworn do depose and say:

That I was formerly accountant at the Bank of Montreal in New Westminster, British Columbia.

That during my term of office as such accountant in the said bank, namely, on or about the fifteenth day of September nineteen hundred and eleven (1911) the said Bank of Montreal at New Westminster, British Columbia, was broken and entered into and the sum of two hundred and seventy one thousand seven hundred and twenty one dollars (271,721.00) in money was stolen from the said Bank.

That among the notes and bills so stolen from the said bank were a number of five dollar bills of the said Bank of Montreal, and among these were to my personal knowledge five dollar bills of the said Bank bearing the following numbers: 824618, 802756, 802781, 802786, 824605, 802788, 824634, 802799, 824611, 824635, 824637, 802794, 824616, 802793, 824601, 802787, 824602, 802789, 824612, 802790, 824619, 824636, 824620, 802779, 824617, 802782, 802772, 802780, 802770, 802755, 802752, 802761, 802763, 802762, 824959, 824604, 814133, 814525, 814148, 824950, 814528, 824962, 814127, 814142, 814134, 814125, 814150, 824946, 824940, 824979, 814558, 814144, 824957, 824970, 824995, 824951, 824992, 824654, 824958, 824969, 814107, 814136, 824965, 814108, 814106, 824912, 824981, 824922, 824657, 814102, 814143, 814530, 824966, 824967, 824953, 824964, 824971, 814548.

And I have signed.

W. H. G. PHIPPS.

Taken and sworn before me at Montreal this 25th day of March, A. D., 1915.

H. LANCTOT,
Police Magistrate.

23 PROVINCE OF QUEBEC,
District of Montreal:

Police Court.

I the undersigned Giulio Caldani of the City and district of Montreal, partner in the firm of Caldani and Rocca, Bankers, of Montreal being duly sworn do depose and say as follows:

On the tenth day of February last (1915) a man whom I have since identified by his photograph as George Wakefield, alias Webster (which photograph I have initialed and which I file with my affidavit) came into our office and asked to change Canadian to American currency. I asked him how much he desired to change and he said he had four hundred dollars. I told the man to come back at 2:00 P. M. in the afternoon and I would change the money for him. When the man left, I immediately telephoned the Wm. J. Burns International Detective Agency who had given me a circular bearing a description of this man and the Burns Agency sent two of their representatives who remained at our office until about two o'clock, when the man I have identified as Wakefield alias Webster, came in with four hundred dollars Canadian currency which I exchanged for four hundred dollars American currency in bills.

Among the Canadian money given me were fifty new five dollar bills on the Bank of Montreal.

Some time after this man had left, Mr. W. D. MacWorth of the Burns Agency came to our office and instructed me to hold the money received from Wakefield, alias Webster, but between the time of the latter's departure and the arrival of Mr. MacWorth, I had paid out fifty five dollars of these bills.

The following morning, Mr. J. Kellert of the Burns Agency came to our office and made a list of the numbers of these bills, which numbers are as follows: 814133, 825050, 814525, 814148, 702,342, 825947, 824950, 925816, 825965, 814528, 702,340, 824962, 814127, 824142, 701980, 825122, 825053, 814143, 825145, 814126, 825968, 825116, 825034, 825035, 825096, 814150, 824946, 824940, 825143, 732702, 825113, 824979, 814558, 825142, 825080, 814144, 825964, 824957, 825062, giving me a copy.

Later Mr. Kellert returned with Mr. Frew of the Bank of Montreal, and I checked over the numbers of the thirty nine Bank of Montreal five dollar bills, which said bills I then sealed in an envelope and ha-ded the said envelope to Mr. Frew of the Bank of Montreal where I understand the bills are still kept.

GIULIO CALDANI.

Taken and sworn before me at Montreal this 15th day of March, A. D., 1915.

H. LANCTOT,
Police Magistrate.

24 CANADA,
Province of Quebec,
District of Montreal, City of Montreal:

Office of the Police Magistrates.

The Information and Complaint of William Henry Gamble Phipps, of the Bank of Montreal, in the District of Montreal taken upon oath, this 24th day of March one thousand nine hundred and fifteen, at the Police Office in the City of Montreal before the undersigned Judge of the Sessions of the Peace, who saith: I reside at No. —.

I am credibly informed that in the City of Montreal, District of Montreal during the month of February, 1915, G. Wakefield, alias G. H. Webster, alias G. Webster, alias Hambone, now in Chicago, State of Illinois U. S. A. did receive and retain in his possession money to the amount of fifteen hundred dollars ($1,500.00) to-wit: bills of the Bank of Montreal and the property of the said Bank of Montreal, a corporation having its head office in the City of Montreal. aforesaid. The said accused then and there knowing that the said bills had been stolen.

Wherefore, I pray for justice and sign.

W. H. G. PHIPPS.

Sworn and acknowledged before me at Montreal, the year month and day first above mentioned.

FRANCOIS X. CHOQUET,
Police Magistrate and Judge of the Sessions of the Peace.

25 *Warrant to Apprehend.*

CANADA,
Province of Quebec,
District of Montreal, City of Montreal:

Office of the Police Magistrates.

To All or Any of the Constables or Other Peace Officers in the District of Montreal:

Whereas, G. Wakefield, alias G. H. Webster, alias G. Webster, alias Hambone, now of Chicago, State of Illinois, U. S. A. has this day been charged, upon oath, before the undersigned Police Magistrate and Judge of the Sessions of the Peace, in and for the District — Montreal, for that he during the month of February, 1915, at the City of Montreal, District of Montreal, did receive and retain in his possession money to the amount of about $1,500 to-wit: bills of the Bank of Montreal and the property of the said Bank of Montreal, a corporation having its head office in the City of Montreal aforesaid; then said accused then and there knowing that the said bills had been stolen.

Against the form of the Statute in such case made and provided.

We are therefore to Command you, in his Magisty's name, forthwith to apprehend the said accused and to bring him before me or some of his Magisty's Justices of the Peace in and for the said District to answer to the said charge, and to be dealt with according to law.

Given under hand and seal, at the Magistrate's office at
26 Montreal, in the said District, this 24th day of March, in the year of our Lord one thousand nine hundred and fifteen.

FRANCOIS X. CHOQUET,
Police Magistrate and Judge of the Sessions of the Peace.

27 CANADA,
Province of Quebec,
District of Montreal, City of Montreal:

Office of the Police Magistrates.

The Information and Complaint of William Henry Gamble Phipps, of the Bank of Montreal, in the District of Montreal, taken upon oath, this 24th day of March, one thousand nine hundred and fifteen, at the Police Office in the City of Montreal before the under-

signed Judge of the Session of the Peace, Who saith: I reside at No. —.

I am credibly informed that in the City of Montreal, District of Montreal, during the month of February, 1915, John Bingham, alias J. C. Billings, alias John Biglow, now in Chicago, State of Illinois, U. S. A., did receive and retain in his possession money to the amount of fifteen hundred dollars ($1,500.00) to wit: bills of the Bank of Montreal and the property of the said Bank of Montreal, a corporation having its head office in the City of Montreal aforesaid. The said accused then and there knowing that the said bills had been stolen.

Wherefore, I pray for justice and sign

W. H. G. PHIPPS.

Sworn and acknowledged before me at Montreal, the year, month and day first above mentioned.

FRANCOIS X. CHOQUET,
Police Magistrate and Judge of the Sessions of the Peace.

28 (*Warrant to Apprehend.*)

CANADA,
Province of Quebec,
District of Montreal, City of Montreal:

Office of the Police Magistrates.

To All or Any of the Constables or other Peace Officers in the District of Montreal:

Whereas, John Bingham, alias J. C. Billings, alias John Biglow, now of Chicago, State of Illinois, U. S. A., has this day been charged, upon oath, before the undersigned Police Magistrate and Judge of the Sessions of the Peace, in and for the District of Montreal, for that he during the month of February, 1915, at the City of Montreal, District of Montreal, did receive and retain in his possession money to the amount of about $1,500 to-wit: bills of the Bank of Montreal, and the property of the said Bank of Montreal, a corporation having its head office in the City of Montreal aforesaid: then said accused then and there knowing that the said bills had been stolen.

Against the form of the Statute in such case made and provided.

We are therefore to Command you, in his Majesty's name, forthwith to apprehend the said accused and to bring him before me or some of his Majesty's Justices of the Peace in and for the said District to answer to the said charge, and to be dealt with according to law.

Given under my hand and seal, at the Magistrate's office at Montreal in the said District, this 24th day of March in the year of our Lord one thousand nine hundred and fifteen.

FRANCOIS X. CHOQUET,
Police Magistrate and Judge of the Sessions of the Peace.

29 PROVINCE OF QUEBEC,
District of Montreal:

Police Magistrate's Office.

In re G. WAKEFIELD, alias G. H. WEBSTER, alias G. WEBSTER, alias HAMBONE.

I, John Thomas Hackett, advocate, of the City of Montreal, having my place of business at No. 2 Place D'Armes, in the said City, Advocate, being duly sworn do depose and say:

1. That I am a member of the Bar of the Province of Quebec and practice my profession in the City of Montreal.

2. That I have taken communication of the affidavits of Isidore Ortenberg, executed on the 24th day of March, 1915, Guilio Caldani, Luigi Rocco, William H. G. Phipps and John William Tims, executed on the 25th day of March, 1915, and in my opinion the matters therein set forth establish that the said G. Wakefield, alias G. H. Webster, alias G. Webster, alias Hambone, did commit an indictable offence to wit, receiving and retaining in his possession bank bills obtained by an offence punishable on indictment under the provisions of the Criminal Code of Canada R. S. C., 1906, ch. 146.

3. That the said offence of receiving and retaining is defined by Section- 399 and 400 of the said Criminal Code and is punishable by imprisonment for a term not exceeding fourteen (14) years under Section 399 and not exceeding five (5) years under Section 400 of the said Code, which said sections I reproduce herewith:

"399. Receiving Property Obtained by Any Indictable Offence.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed, in Canada, would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained. 55-56 V., c. 29, s. 314."

30 "400. Receiving Stolen Property.—Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. 55-56 V., c. 29, s. 315."

4. The said Criminal Code wherein are contained *in* said Sections is still in force and is the law of Canada.

And I have signed:

JOHN T. HACKETT.

Sworn, taken and acknowledged before me at the City of Montreal, this 26th day of March, 1915.

H. LANCTOT,
Police Magistrate.

31 EXHIBIT D.

Abstract of Testimony Taken Before the Commissioner at Chicago.

WILLIAM LORD, examined by Mr. Bulkley, testified on behalf of the demanding government in substance as follows:

I reside at 1765 St. Urban Street, Montreal. I am a detective in the employ of the William J. Burns National Detective Agency. I know the accused, John Bingham. I know him also under the names of Benson and Billings. There are other names, but I have not got them in my possession just now. I first saw him on Feb. 10th, 1915 at Montreal. At 11 A. M. on that day I was called from the Montreal office in company with another operative, Thomas Curran. We went to the Italian money exchange in St. James Street kept by Caldani & Rocco, and we saw another man. We knew him as Webster. He is known also as Wakefield. He entered this place. He left Bingham in the saloon at the corner of Inspector and St. James Streets, Montreal. Those two men had a discussion there together this man Bingham and Wakefield. They had a drink there and they left the place and went up the street. Webster got the money in this Italian place, came out and showed it to Billings and went in a saloon. After a little talk they went out on the street and separated. Billings went straight up the street in the direction of the Bluebell Saloon, corner of Craig and St. Antoine Streets. This man here went to the Hotel, into the saloon there, while his friend Webster entered another Italian Exchange also in St. James Street. Webster came out of this place and joined Billings in the Bluebell Saloon, and I went in there. I overheard Webster say to Billings, "What is the next place?" And Billings said, "Boston." I then went out of the place. They went out of the place and then they went in St. Antoine Street to some money exchange. They had a drink of whiskey in the Bluebell Saloon. When they left the
32 Hotel, they went to Hender's Steamship Agency, 45 Windsor Street. Billings went into the Steamship Agency and told Webster to keep out of the way, motioned him to keep away while he went inside. Billings came out of the Steamship Agency and then walked away, but they went back two or three times together. They went to Freeman's Cafe, St. Francis Xavier Street. When they left there, Billings, here, went into Waterman's Fountain Pen Store. On leaving there the two of them entered Freeman's Hotel, St. James Street. They entered the elevator. When they came out of there, they paid their bill, took a Windsor car and alighted at the Grand Trunk Station. They walked west on St. James Street and Billings entered a little grocery store at 663 St. James Street, where he bought a package of cigarettes. After going to several other places together they both entered the Grand Trunk Station. Billings purchased two Pullman car tickets and two tickets for Toronto train No. 19, leaving Montreal at 7:30 P. M. They then returned to the Hender's Steamship Agency. They then went to a number of places together, Billings generally going in and leaving Webster outside.

Finally they went to the St. Henry Street Railroad Station and took the train for Toronto at 7:43 P. M. That station is about a mile out of Montreal. Instead of going from the Montreal Station they went from the St. Henry Station. They arrived at the Toronto Union Station at 6 o'clock on the morning of Thursday, Feb. 11, 1915. Mr. Curran and myself went on the same train. They left, carrying their grips, and took a street car and alighted at the Gladstone Hotel. They registered there as W. H. Webster and Mr. Benson of Buffalo. They went together to a number of places in Toronto. At twenty minutes past twelve both of them left the Hotel and took a car to the Sunnyside Station. They were both under the influence of drink. They boarded a train to Hamilton which left at 12:30, and arriving at Hamilton they alighted, and when they had alighted I
33 noticed that they had changed hats. Billings was wearing Webster's blue telescope hat and Webster was wearing Billings' black derby hat. They left Hamilton by train at 2:30 P. M., and arrived at St. Catherine, Ontario at 3:20 P. M. They left St. Catherine at four o'clock by the car for Niagara Falls. I did not follow them further.

I saw Webster again this morning in the County Jail. He is the man I have been talking about as Webster. The accused, known here as John Bingham, is the other individual I saw and followed. I know the jeweler, Alfred Eaves. I saw the two, Billings and Webster, enter that place on the afternoon of Wednesday, Feb. 10th. I looked through the doorway and saw that they were examining some article of jewelry. I saw them at Caldani and Rocco's. I saw them receive money there; I saw Webster receive money there. He was in the room adjoining the main office. Both Caldany and Rocco were there. Webster and Bingham were not both there; only Webster.

The witness was here cross examined by Mr. David, counsel for the defense.

On re-direct examination by Mr. Bulkley, witness testified in substance as follows:

From my notes and that memorandum book and my memory I prepared each evening the notes which have been typewritten and which I use to refresh my memory with. I referred to these notes. I did not read them word for word.

34 THOMAS CURRAN, examined by Mr. Bulkley, testified on behalf of the demanding government in substance as follows:

My address is 57 Fort Street, Montreal. I am an operative in the William J. Burns Detective Agency. I have before seen the accused who is here known as John Bingham. I saw him on Feb. 10th in Montreal. I know him also by the name of Billings. I first saw him at Halpert Bros.' Saloon, at the corner of Inspector and St. James Streets. We met him in the company of Webster. Webster is George Wakefield. We had a sort of description of the men. Webster was pointed out at Caldani and Rocco's, 508 St. James St. I have seen him since. I have seen him here in Chicago at the County Jail. He is known there as George Wakefield. He is the same man

I saw at Caldani and Rocco's. After he left there, he proceeded to Halpert Bros.' Saloon and met Billings there and both came out and Webster went into Dolan's, 424 St. James St. I was with Mr. Lord all the time with the exception of about three quarters of an hour.

(It was conceded by counsel for the defense that witness would testify in the same way as witness Lord as regards the movements and doings of Webster and Billings while they,—Lord and Curran,—were together.)

While I was by myself and Lord was not with me, Billings continued in the cab and went to 45 Windsor Street. Billings stayed in the cab and Webster entered the place. They then returned to the Station. Then they got into another cab and returned to 45 Windsor Street. This time Billings went while Webster remained outside. They then went to the Station again and took another cab and returned to the Freeman Hotel. I was then joined again by Mr. Lord. Except for this, Lord and I were together.

The witness was cross examined by Mr. David.

35 HARRY GILL, witness on behalf of the demanding government, examined by Mr. Bulkley, testified in substance as follows:

I live at 33 W. 31st Street, Chicago. I know the accused, John Bingham. I have seen him before in the barber shop where I work, in the Bush Temple of Music, Chicago Avenue and Clark Street. I have seen him on and off there for two years or more. I shined his shoes. He paid for it. I gave him a check and he paid me through the boss. I saw Canadian money there. This was about a month and a half ago. It was about the 10th of Feb. He gave me at two different times five dollar bills of the Montreal Bank to take up to the North Side State Bank and get changed. I had them exchanged for American money. The first time I did, but the second time they denied the bill. They said the second bill was no good. I took it to the head cashier of the bank. He held the bill and called up the Pinkerton Agency. He was holding the bill until this gentleman (indicating the respondent) came in and got it. I mean Mr. Bingham. He followed me into the bank. He said that was his money and asked what was the matter with it. He took his money and left.

Cross-examination by Mr. David.

JOSEPH FEKETE, witness on behalf of the demanding government, examined by Mr. Bulkley, testified in substance as follows:

I live at 1957 Grand Avenue, Chicago. I am in the steamship business and banking business at 1957 Grand Avenue. That is on Robey Street and Grand Avenue. I know the accused, John Bingham. That is the man there (indicating the respondent). Last year about summer time, I had three transactions with him. The first was in the summer time. I do not remember the date. It was at 1957 Grand Avenue. Mr. Bingham came to my office and I changed some Canadian money. I think about $60.00 or
36 $70.00. I do not exactly remember the amount. The next time he came was between five and six weeks later. I changed

some Canadian money for him that time. I do not know exactly how much. It was between $50.00 and $100.00. He asked me if I would change Canadian money. I said "Yes", and I changed it for him; that is all I know. The third time he came was about five or six weeks later. I remember that time good. He had $174.00 and I changed it for him, and my son asked him where he got that money, so much Canadian money. Mr. Bingham said he was a collection agency for Canada. I deposited it in the bank the first and second times, and the third time we found $35.00 stolen money. Mr. Kennedy of the Mid-City Bank told me that; he wanted me to try and find out who he was.

I know a man by the name of Webster or Wakefield. I saw him on March 4th between eight and nine o'clock, about half past eight. It was at 1957 Grand Avenue. Webster came into my office between eight and nine and he said, "Hello Joe." I did not know him. I do not know how he knew my name. He says, "Joe, I have a couple of Canadian dollars. Can you cash them for me?" The defendant was not present at that time. I told him, "Yes, I will cash them for you." I said, "How much have you got?" He said, "$120.00." He counted $120.00 on the counter and I put that $120.00 in my pocket and went inside in my office to see if it was the right number for the stolen money; and Mr. Webster says, "What are you looking for, Joe?" I said, "Nothing." He said, "Do you think that money is no good? If you don't think the money is any good give it back to me." I says, "I won't cash it for you." He said, "I will tell you what I will do; I will be back in one hour. If the money is all right are you willing to pay me the American money." I told him, "I won't cash it for you now." Mr. Webster said, "I will be
37 back in an hour", and he ran out. I left the money in my pocket and I had another friend in the office. I told him, "You run after him. I want to get that fellow." He ran after Mr. Webster and Mr. Webster jumped on a car. I ran after him and caught him by the neck. I says, "You make me trouble with that money." He said, "No, I don't make any trouble with you, Joe," and I took him in the office. I called up the police station and I waited about fifteen or twenty minutes and when the officers came to my office they took him to the Station. That is all I know about it. This money was all five dollar bills. Sergeant Hamilton took the money. That is the same money I took from Mr. Webster. I did not see anything of Bingham at that time. I do not know where he was.

Cross-examination by Mr. David.

Redirect examination by Mr. Bulkley:

I did not know Bingham before he came there to exchange money. I never met him anywhere else. I never knew of his having any business. He told me he had business round there, somewhere round Grand Avenue and Robey Street. He said he lived at 328 Racine Avenue. I never investigated to find out whether he did or not. I turned the money over to the officer.

Mr. David, on behalf of the defendant, stated he would admit that it was the same money.

THOMAS ETCHINGHAM, examined by Mr. Bulkley, on behalf of the demanding government, testified in substance as follows:

I live at 2910 Cortland Street, Chicago. I am a police officer; was a police officer on March 4th. I saw this gentleman (indicating the respondent) on March 4th. I mean this man here. I saw him at the northwest corner of Robey Street and Grand
38 Avenue at Hardell's Saloon. I know where Mr. Fekete's place is. The saloon is directly across the street. I saw him there between half past nine and a quarter to ten in the morning. I was in the saloon and Bingham walked along and he asked the saloon keeper where was the telephone. The saloon keeper said it was out in front. Bingham was there a few minutes. He did not use the telephone. He got a drink of whiskey and walked out of the door. I was in the saloon about fifteen feet from the bar.

Cross-examination by Mr. David.

Redirect examination by Mr. Bulkley:

I did not arrest him.

JOSEPH FEKETE testified further for the demanding government. (Witness is shown certain bank bills and asked whether he can identify them).

Yes, I can identify them. The reason I recognized them is that they were torn and some of them were burned. It is the same money. I turned that over to the officer; the same money, all five dollar bills.

Mr. David, on behalf of the defendant, "I am admitting it is the same money."

LOUIS LARSON, examined by Mr. Bulkley, on behalf of the demanding government, testified in substance as follows:

I live at 2413 Rhine Street, Chicago, Illinois. I am a police officer. I know the accused, John Bingham. I see him here. He is sitting behind the lawyer, Mr. David. I caused his arrest on March the 5th last in the Ontario Hotel, Chicago. After
39 we got to the station, I searched him. I found some pieces of paper on him. I had some talk with Mr. Bingham when I arrested him. I asked him what his name was. He said his name was Bunte. He said he came from Buffalo; that h was in the candy business. He said he came here to see Mr. Shields. I told him Captain Healy wanted to see him and we got in the car and went to the station. I have an envelope with papers taken from him and some money. He had $1,234.00 in money; that is $404.00 in Canadian money and $830.00 in U. S. money. I do not know any of the parties mentioned in these memoranda. I understand that Mr. Bingham went by the name of Billings some

times, I do not know; one of these memoranda refers to a Mr. Billings. I believe I have seen Bingham some other time. I do not just recall where. I knew his brother well. I have often seen him. He is in the sewing machine business on the northwest side. I do not know what business this man has.

Cross-examination by Mr. David.

PATRICK E. HAMILTON, examined by Mr. Bulkley, testified on behalf of the demanding government in substance as follows:

I live at 3942 N. Lowell Avenue, Chicago. I am a police officer, stationed at W. Chicago Avenue. I know John Bingham. He is that gentleman there (indicating the respondent). I know George Wakefield, alias Webster. I last saw him at the W. Chicago Avenue Police Court. I caused his arrest on the morning of March the 4th in Fekete's bank. When I got to the bank Mr. Fekete handed me twenty four Canadian five dollar bills.

Witness is shown certain bank bills and asked if those are the bills.

Yes, those are the bills. I placed him under arrest and took him to the Chicago Avenue Station and then I searched him. I found some papers on him. Here they are (witness hands some papers to Mr. Bulkley). I asked Webster about the letter which is in those papers, addressed to G. H. Welling, and he said that was his, he was known by that name.

(Witness is asked is he knows what the expression, "Dear Ham", used in one of the letters, means.)

That is a nickname he is known by. They call him "Ham".

(Witness's attention is called to another letter, addressed J. C. Bigelow, 678 N. Wells Street.)

That place is a saloon. I cannot recall the name of the man who owns it.

(Witness's attention is called to another envelope, addressed to G. H. Webster, 678 N. Wells Street.)

That is the same saloon.

(Hereupon the envelopes referred to in the foregoing testimony were offered and admitted in evidence for the purpose indicated in said testimony. Save for said purpose of showing Defendant's aliases, which are admitted said exhibits are wholly immaterial so far as regards the questions arising upon this petition for Habeas Corpus. And thereupon the twenty four Canadian bills referred to in the foregoing testimony were offered and admitted in evidence. Save for the purpose of showing that said bills were the bills turned over by witness Fekete as stated by him in his testimony, which was admitted on behalf of the defendant as above stated, said exhibits are wholly immaterial so far as regards the questions arising upon this petition for Habeas Corpus.)

At the time of Webster's arrest, I asked him where he got this money. He said he got it in a legitimate way. He said he did not know it was stolen money. That is all he said. He did not

tell me where he got it. I said something to him about
41 the looks of those bills. He did not answer any questions at all.

DAVID B. KENNEDY, examined by Mr. Bulkley, testified on behalf of the demanding government in substance as follows:

I live at 202 S. Hamlin Avenue, Chicago. I am the cashier of the Mid City Trust and Savings Bank. That is located at Madison and Halsted Streets. I know Joseph Fekete. He is a depositer in our bank. He deposited some Canadian bills there within the last six months.

Mr. Bulkley: These are the bills that were presented by Webster. I have not got the bills that Bingham presented. They were deposited and went through.

The Witness: A card was submitted by the Pinkerton Detective Agency to us with reference to the stolen bills. That caused us to examine all Canadian bills on the bank of Montreal. Amongst the bills that were deposited by Fekete, we found several bills that were mentioned on this card. I examined these bills myself. I did not receive them. The receiving teller turned Mr. Fekete's bills over to me. Fekete went to the receiving teller's window and made the deposit. The receiving teller found, among the bills deposited, these Bank of Montreal bills. Then he sent Fekete to me with the bills; to look over the bills. Then I consulted the card. I found in the neighborhood of forty of those bills, five dollar bills on the Bank of Montreal. We sent them for collection to the American Express Company. They gave us American money for them. I did not take the numbers of those bills. The only thing I know is that they
are numbers that come within this card. I know that from
42 this examination.

(The card was here offered and admitted in evidence for the purposes indicated in the foregoing testimony. So far as regards the questions arising upon this application, the said exhibit is immaterial, its contents, so far as material, appearing from the foregoing testimony.)

After certain moneys were supposed to have been stolen from a bank in Canada there was a notice sent to all the banks. Our bank got it.

(Which, in substance, was all the testimony given at the hearing before the commissioner at Chicago and which together with the affidavits or depositions and other documentary evidence set forth in the previous exhibits to this petition, constituted the whole of the evidence relied upon by the demanding government upon said application for extradition.)

43 EXHIBIT E.

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

Before Lewis F. Mason, Esq., United States Commissioner.

In the Matter of the Application for the Extradition of JOHN BINGHAM, alias J. C. Billings, alias John Bigelow, under the Treaties Between the United States and Great Britain.

To Hon. Robert Lansing, Acting Secretary of State for the United States:

I, Lewis F. Mason, United States Commissioner for the Northern District of Illinois, especially authorized and empowered to perform all the duties of United States Commissioner under the extradition laws and treaties of the United States, do hereby certify *that* the proceedings in the above entitled matter, o be as follows:

On the 3rd day of April, 1915, complaint under oath and in writing was made before me by Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, Illinois, charging John Bingham, alias J. C. Billings, alias Biglow with having within the month of February, 1915, committed the crime of receiving and
44 retaining in his possession money to the amount of $1,500.00, to-wit, bills of the Bank of Montreal and the property of said bank of Montreal, a corporation having its head office in the City of Montreal, the said accused then and there knowing that the said bills had been stolen within the jurisdiction of the Kingdom of Great Britain, said crime being one provided for in a treaty or convention for the extradition of criminals, between the government of the said Kingdom of Great Britain and the Government of the United States, and that the said John Bingham, alias J. C. Billings, alias Biglow, had fled from said Kingdam of Great Britain and was then within the said district of Illinois.

Accordingly thereupon, on the 3rd day of April, 1915, warrant was issued for the apprehension of the said John Bingham, alias J. C. Billings, alias Biglow, said warrant being directed to the United States Marshal for the Northern District of Illinois and the said John Bingham, alias J. C. Billings, alias Biglow, being arrested by the said United States Marshal, was on the 3rd day of April, 1915, arraigned before me, thereupon the respondent being represented by counsel, upon motion of attorney for consul, hearing was continued until the 9th day of April, at the hour of 10:30 A. M.

Thereupon, the hearing of the testimony of witnesses was begun and continued from day to day until the 19th day of May, 1915, at my office in the City of Chicago, and the district afore-
45 said, this matter came on for a final decision, on the 19th day of May, and thereupon appearing for the government

of the Kingdom of Great Britain, Hon. A. W. Bulkley, and for the respondent, Hon. William Dillon and Patrick O'Donnell. Thereupon it appearing to my satisfaction that there was sufficient evidence to sustain the charge under the provisions of said treaty and that there was probable cause to believe the said John Bingham, alias J. C. Billings, alias Biglow, is guilty of the crime of receiving and retaining in his possession money to the amount of fifteen hundred dollars ($1,500.00) the bills of the Bank of Montreal and the property of said Bank of Montreal, a corporation having its head office in the City of Montreal aforesaid, the said accused knowing that the said bills had been stolen as charged in the complaint, I accordingly ordered by commitment dated the 19th day of May, 1915, that he be committed to the jail of the County of Cook, and there to remain and abide the order of the Secretary of State of the United States.

Hereby I enclose a copy of the proceedings and testimony taken at such hearing before me and I hereby certify said copy to be a true copy of testimony and copy of exhibits submitted on said hearing.

Witness my hand and seal, this 8th day of June, 1915.

[SEAL.] LEWIS F. MASON,
United States Commissioner for Northern District of Illinois, Especially Authorized to Perform All the Duties of United
46 *States Commissioner under the Extradition Laws and Treaties of the United States.*

I, Lewis F. Mason, United States Commissioner, hereby acknowledge this to be a true copy of certificate forwarded to the Secretary of State, in the above entitled matter, this 21st day of June, A. D. 1915.

[SEAL.] LEWIS F. MASON,
United States Commissioner.

(Endorsed:) Filed June 22, 1915. T. C. MacMillan, Clerk.

47 And on the same day to-wit: the twenty-second day of June, 1915, in the record of proceedings thereof in said entitled cause, before the Hon. George A. Carpenter, Judge of said Court, appears the following entry to-wit:

32179.

In the Matter of the Petition of JOHN BINGHAM for a Writ of Habeas Corpus.

Now comes the petitioner by his attorney and moves the Court for the issuance of a Writ of Habeas Corpus, which motion is entered and continued. It is further Ordered by the Court that the Marshal be and he is hereby directed to hold said petitioner in his

custody within this jurisdiction until June 30th, and that the motion for the issuance of a Writ of Habeas Corpus be and the same is hereby set for hearing on that date.

48 And afterwards to-wit: on the thirtieth day of June, 1915, in the record of proceedings thereof in said entitled cause before the Hon. George A. Carpenter, Judge of said court, appears the following entry to-wit:

32179.

In the Matter of the Petition of JOHN BINGHAM for a Writ of Habeas Corpus.

Now come the parties by their attorneys and it is Ordered by the Court that the motion of the petitioner herein for a Writ of Habeas Corpus be and the same is hereby continued until July 7th, 1915, for hearing.

49 And on to-wit: the seventh day of July, 1915, in the record of proceedings thereof in said entitled cause before the Hon. F. A. Geiger, United States District Judge for the Eastern District of Wisconsin, sitting by designation in the United States District Court for said Northern District of Illinois, appears the following entry to-wit:

32179.

In the Matter of the Petition of JOHN BINGHAM for a Writ of Habeas Corpus.

Now comes on to be heard the application for a writ of Habeas Corpus. After hearing the arguments of counsel and being now fully advised in the premises, it is Ordered by the Court that said application for a Writ of Habeas Corpus be and the same is hereby denied, and the Petition, heretofore filed herein, be and the same is hereby dismissed, and five days are hereby allowed for the preparation of an appeal.

50 And on to-wit: the thirteenth day of July, 1915, came the petitioner in said entitled cause by his attorneys and filed in the clerk's office of said court his certain Petition for Appeal and Assignment of Errors. Said Petition for Appeal and Assignment of Errors, are respectively in the words and figures following to-wit:

51 *Petition for Appeal.*

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States in and for said District and Division.

32179.

In the matter of JOHN BINGHAM, arrested, detained and restrained of his liberty pursuant to the warrant or mittimus of the commissioner of said court upon the application of the British Consul at Chicago for the extradition of said defendant under the treaties between the United States and Great Britain.

Petition for Appeal.

The above named John Bingham, petitioner in the above entitled matter, feeling himself aggrieved by the final judgment heretofore made and entered by this court in this cause on the 7th day of July A. D., 1915, whereby it was ordered and adjudged that the application of the said petitioner for a writ of Habeas Corpus be denied and his said petition be dismissed, comes now by his attorneys and petitions this court for an order allowing him, the said petitioner, to prosecute an appeal from said final judgment to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order may be made fixing the amount of the security which the said petitioner shall give and furnish upon such appeal, and also that all further proceedings in this matter in this court be superseded and
52 stayed, and that the present custody of said petitioner and prisoner be not disturbed, pending said appeal and until the final determination of said appeal by said Supreme Court of the United States.

And your petitioner will ever pray.

O'DONNELL & TOOLEN &
WILLIAM DILLON,
Attorneys for Petitioner.

(Endorsed:) Filed July 13, 1915. T. C. MacMillan, Clerk.

53 *Assignment of Errors.*

UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States in and for said District and Division.

32179.

In the matter of JOHN BINGHAM, arrested, detained and restrained of his liberty pursuant to the warrant or mittimus of the commissioner of said court upon the application of the British Consul at Chicago for the extradition of said defendant under the treaties between the United States and Great Britain.

Assignment of Errors.

Now comes the petitioner in the above entitled matter by O'Donnell and Toolen and William Dillon, his attorneys, and says that the United States District Court in and for the Northern District of Illinois, Eastern Division, committed manifest error in its judgment rendered in the above matter on the 7th day of July A. D., 1915, in this, that:

1. Said Court erred in denying said petitioner's application for a writ of habeas corpus.
2. Said Court erred in dismissing the petition of petitioner.
3. Said Court erred in not directing the writ of habeas corpus to issue as prayed.

Wherefore, said Petitioner, by his said attorneys, prays that said judgment may be reversed.

O'DONNELL & TOOLEN &
WILLIAM DILLON,
Attorneys for Petitioner.

(Endorsed:) Filed July 13, 1915. T. C. MacMillan, Clerk.

54 And on the same day to-wit: the thirteenth day of July, 1915, in the record of proceedings thereof in said entitled cause, before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

55 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court of the United States in and for said District and Division.

In the matter of JOHN BINGHAM, arrested, detained and restrained of his liberty pursuant to the warrant or mittimus of the commissioner of said court upon the application of the British Consul at Chicago for the extradition of said defendant under the treaties between the United States and Great Britain.

Order.

This cause this day coming on to be heard upon the petition of John Bingham for an appeal to the Supreme Court of the United States from the final judgment heretofore rendered in this matter, whereby the application of the said petitioner for a writ of Habeas Corpus was denied and his said petition was dismissed, and upon reading and considering said petition and the assignment of errors filed herewith,

It is hereby ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from said final judgment, upon said Petitioner filing an appeal bond properly conditioned with good and sufficient sureties, the amount of which bond is fixed at the sum of $250.00, and which bond is now presented to the Court and is hereby approved.

And it is further ordered that the present custody of said petitioner and prisoner be not disturbed, pending the final decision of said appeal.

KENESAW M. LANDIS, *Judge.*

56 And on the same day to-wit: the thirteenth day of July, 1915, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

57 *Bond.*

Know all men by these presents, That we, John Bingham, of the City of Chicago and State of Illinois, as Principal, and Hannah T. Hanlon and Agnes O'Brien also of said City and State, as Sureties, are held and firmly bound unto John J. Bradley, the United States Marshall for the Northern District of Illinois in the full sum of Two hundred and fifty dollars ($250.00) to be paid to the said John J. Bradley, or his Successor in said office of Marshall as aforesaid, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Signed, Sealed and delivered by us this 9th day of July in the year of Our Lord One Thousand Nine Hundred and Fifteen.

The condition of the foregoing obligation is such that whereas in a certain matter pending in the District Court of the United States in and for the Northern District of Illinois, Eastern Division, at Chicago aforesaid, in which the above bounded John Bingham was petitioner, and in which said John Bingham, by his said petition prayed the Court to grant him a Writ of Habeas Corpus in accordance with the prayer of his said petition, a certain judgment was rendered against the said John Bingham, whereby it was ordered and adjudged that the application of the said petitioner for a Writ of Habeas Corpus be denied and his said petition be dismissed. And whereas, the said John Bingham has petitioned for and been allowed an appeal from said final judgment to the Supreme Court of the United States.

Now the condition of the above obligation is such that if the said John Bingham shall prosecute his said appeal with effect, and shall answer all damages and costs which may be adjudged against him in case the said judgment shall be affirmed, then the above obligation shall be void, otherwise to remain in full force and effect.

JOHN BINGHAM. [SEAL.]
HANNAH T. HANLON. [SEAL.]
AGNES O'BRIEN. [SEAL.]

Signed, Sealed and Delivered in the presence of—

MARY E. JOYCE.
CLARENCE A. TOOLEN

Approved by—

K. M. LANDIS.

58 STATE OF ILLINOIS,
County of Cook, ss:

Hannah T. Hanlon being duly sworn, deposes and says that she is the person whose name is subscribed to the foregoing bond as one of the sureties therein; that she is the owner in fee simple of the following real estate, to-wit:

Lots Twenty-eight (28) and twenty-nine (29) in Block Eight (8), in Canal Trustees' Subdivision of E. Manchester Nichols' Addition to Chicago, a Subdivision of the North Half (Except the South 39½ feet), Section Seven (7), Township thirty-nine (39) North Range fourteen (14) East of the Third Principal Meridian, and that said real estate is unencumbered, is vacant and is worth the sum of about Five thousand dollars.

HANNAH T. HANLON.

Subscribed and sworn to before me this 9th day of July A. D., 1915.

[SEAL.] MARY E. JOYCE,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

Agnes O'Brien being duly sworn, deposes and says that she is the person whose name is subscribed to the foregoing bond as one of the sureties therein; that she is the owner in fee simple of the following real estate, to-wit:

Lot Six (6) in Block Twelve (12) in Butler Wright and Webster's Addition of the East half of Section Nine (9) Township Thirty-nine (39), North Range fourteen (14) East of the third Principal Meridian, and that said real estate is unencumbered, improved and is worth the sum of about Five thousand dollars.

AGNES O'BRIEN.

Subscribed and sworn to before me this 9th day of July A. D., 1915.

[SEAL.] MARY E. JOYCE,
Notary Public.

(Endorsed:) Filed July 13, 1915. T. C. MacMillan, Clerk.

59 And on to-wit: the twentieth day of July, 1915, came the petitioner in said entitled cause by his attorneys and filed in the clerk's office of said court a certain Præcipe for Record in words and figures following to-wit:

Præcipe for Record.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the District Court of the United States in and for said District and Division.

No. 32179.

In the Matter of JOHN BINGHAM, Arrested, Detained, and Restrained of His Liberty Pursuant to the Warrant or Mittimus of the Commissioner of said Court upon the Application of the British Consul at Chicago for the Extradition of said Defendant under the Treaties Between the United States and Great Britain.

Præcipe for Record.

The Clerk will please prepare a complete transcript of the record in the above entitled cause to be filed in the Supreme Court of the United States.

O'DONNELL & TOOLEN &
WILLIAM DILLON,
Attorneys for Petitioner, John Bingham.

Received a copy of the foregoing præcipe for a record this 20th day of July, 1915.

BULKLEY, MORE & TALLMADGE,
Attorneys for the Government Asking for the Extradition of said Petitioner, John Bingham.

(Endorsed:) Filed July 20, 1915. T. C. MacMillan, Clerk.

60 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of all the proceedings had of record in said Court, in the cause entitled, In the Matter of John Bingham, Arrested, Detained and Restrained of his Liberty, Pursuant to the Warrant or Mittimus of the Commissioner of said Court upon the Application of the British Consul at Chicago for the Extradition of said Defendant under the Treaties Between the United States and Great Britain, as the same appear from the original Records and Files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Chicago, in said District, this twenty-sixth day of July, 1915.

[Seal of Dist. Court U. S., Northern Dist. Illinois. 1855.]

T. C. MACMILLAN, *Clerk,*
By JOHN H. K. JAMAR,
Deputy Clerk.

Endorsed on cover: File No. 24,875. N. Illinois D. C. U. S. Term No. 592. John Bingham, appellant, vs. John J. Bradley, United States Marshal for the Northern District of Illinois. Filed August 11th, 1915. File No. 24,875.

Office Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 592.

JOHN BINGHAM, *Appellant,*

vs.

JOHN J. BRADLEY, *United States Marshal for the Northern District of Illinois.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION AND SUGGESTIONS.

HUGH B. ROWLAND,
ALMON W. BULKLEY,
CLAIR E. MORE,
Counsel for Appellee and The Province of Quebec.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

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JOHN BINGHAM, *Appellant,*

vs.

JOHN J. BRADLEY, *United States Marshal for the Northern District of Illinois.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

MOTION AND SUGGESTIONS.

MOTION.

Now comes the appellee, by Hugh B. Rowland, Almon W. Buckley, and Clair E. More, his attorneys, said attorneys acting also in this behalf for the provincial government of Quebec, in the Dominion of Canada, and moves to advance this cause upon the docket and hear said cause at a date as early as the convenience of the Court will permit.

SUGGESTIONS FOR ADVANCEMENT.

I. In February, 1915, this appellant was arrested in Chicago, Ill., on a fugitive warrant issued by a United States Commissioner upon a complaint filed by Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, charging appellant with having committed the crime of receiving and retaining in his possession money to the amount of $1,500.00, bills of the Bank of Montreal, and the property of the Bank of Montreal, a corporation having its home office in the city of Montreal, knowing that the said bills had been stolen, the said crime being extraditable under the treaties between the United States and Great Britain. (Treaty of 1889, Article 1, Paragraph 3.)

Said appellant, John Bingham, who was also known as J. C. Billings and John Bigelow, was arrested under said fugitive warrant, and brought before the United States Commissioner for hearing. On the hearing, it appeared from the evidence introduced before the commissioner that appellant had been charged by William Henry Gamble Phipps, of the Bank of Montreal, before Francois H. Choquet, Police Magistrate and Judge of the Sessions of the Peace of the city of Montreal, in the District of Montreal, Province of Quebec, with having committed said crime; that thereupon a warrant was issued by said police magistrate for the apprehension of said appellant. At the conclusion of the hearing the commissioner found that there were sufficient grounds to believe said John Bingham, alias J. C. Billings, alias John Bigelow, guilty of the crime as charged, and thereupon made his report in the usual form to the Secretary of State, and issued his mittimus to appellee, the marshal of the United States for the Northern District of Illinois, to commit appellant to the keeper of the jail of Cooke County, to abide the order of the Secretary of State.

Appellant filed a petition in the District Court of the United States for the Northern District of Illinois for a writ of *habeas corpus* to be released from such imprisonment, in which petition he set forth the authority under which he was held and a brief account of what the evidence tended to prove, and then claimed that his detention was illegal.

Upon a hearing of said petition before the District Court of the United States for the Northern District of Illinois, Hon. F. A. Geiger presiding, the Court denied said application for write of *habeas corpus*, and dismissed appellant's petition.

II. In the meantime the Secretary of State has issued his warrant of extradition.

III. In our treaty obligations with Great Britain as contained in Article 10 of the Treaty of 1842, and the supplemental treaties of 1899 and 1900, respectively, the United States is in duty bound to surrender up with reasonable promptness and despatch a fugitive from justice from Great Britain or colonies. To this end, the Congress has passed the necessary statutory regulations which contemplate a speedy surrender. The *habeas corpus* act also contemplates a speedy disposition of this class of cases. Section 759 of the Revised Statutes of the United States provides that "When the writ (*habeas corpus*) is returned, the date shall be set for the hearing of the same, not exceeding five days thereafter, unless the party petitioning requests a longer time." Section 761 provides that "The court or justice or judge shall proceed in a *summary way* to determine the facts in the case by hearing the testimony and arguments and thereupon dispose of the party as law and justice require."

IV. In this case, the District Court, under the statute, did not find sufficient ground to warrant the issuing of the writ, and so denied the application.

V. The delay in presenting this motion to advance has been caused by the desire to have another case of the same character and based upon this same record, involving the same questions, heard with this cause. At the time the fugitive warrant for John Bingham was issued, there was also issued another warrant for one George Wakefield, who was also charged along with appellant with the same crime. Wakefield was not apprehended and brought before the commissioner until a short time ago. He has now had his hearing, been committed to await the order of the Secretary of State, and a short time ago made application to the District Court of the United States for a writ of *habeas corpus*, which was refused, and from which order he has perfected an appeal to this court, and the record must be filed here within a very few days, at which time we shall move this court to consolidate it for hearing with this cause.

VI. Appellant, by resisting extradition, is thereby delaying the enforcement of the criminal laws in the province of Quebec, in the Dominion of Canada, and as it is of importance to the people of Canada and the province of Quebec that its criminal laws should be speedily enforced we respectfully submit that the issues of this case which are simple and the record short be determined at as early a date as the convenience of the Court will permit.

Respectfully submitted,

HUGH B. ROWLAND,
ALMON W. BULKLEY,
CLAIR E. MORE,
Counsel for Appellee and The Province of Quebec.

16

Office Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1915.

No. 592

JOHN BINGHAM,
Appellant.

vs.

JOHN J. BRADLEY, United States Marshal for the Northern District of Illinois,
Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

WILLIAM DILLON,
Counsel for Appellant.

CHAMPLIN LAW PRINTING CO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 592

JOHN BINGHAM,
Appellant.

vs.

JOHN J. BRADLEY, United States Marshal for the Northern District of Illinois,
Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois.

BRIEF AND ARGUMENT FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a final order or judgment of the District Court of the United States for the Northern District of Illinois, Eastern Division, denying an application for a writ of *habeas corpus*. The writ was asked for the purpose of compelling the marshal (the appellee here) to produce the body of one John Bingham (appellant here, hereinafter called defendant) and to make return to the writ in the usual way. By order entered on the 7th day of July, A. D. 1915, the court refused the application for the writ and from this order an appeal was prayed and allowed to this court.

The facts of the case are to be gathered from the petition for the writ of *habeas corpus* with the exhibits thereto setting forth the documents relied on, the written evidence sent on from Montreal, and the substance of the oral testimony taken before the commissioner in Chicago.

From these it appears that an application was, on the third day of April, 1915, made by the British Consul at Chicago on behalf of the government of the Dominion of Canada for the extradition of the defendant to Montreal. The complaint filed charged that the petitioner had in the month of February, 1915, been guilty of the crime of receiving and retaining in his possession money to the amount of $1,500, being bills of the Bank of Montreal and the property of said bank, knowing the same to have been stolen; that the defendant was a fugitive from justice from the District of Montreal, Province of Quebec and Dominion of Canada; that the crime of which the said defendant was so accused was an offense within the treaties between the United States and Great Britain; and that deponent's information and belief were based upon certain documents and depositions in said complaint specified and referred to.

The complaint does not allege that the offense was committed in Canada; it says nothing as to the place where it was committed (Rec. 7-8).

The evidence relied on in support of the charge consists of (1) certain affidavits taken at Montreal and certified by the American Consul there; and (2) the testimony of certain witnesses who were orally

examined and cross-examined before the commissioner at Chicago.

As to the first class of testimony, the defendant was not confronted with the witnesses, nor did he have the opportunity of cross-examining them. As to the second class, he was so confronted and he did, by his counsel, cross-examine them.

The affidavits sent on from Montreal tend to show:

(1) That in the month of September, 1911, a branch of the Bank of Montreal at New Westminster, British Columbia, was broken into and a large sum of money in bills of the said bank was stolen.

(2) That in the month of February, 1915, the defendant went to the store of one Alfred Eaves, a jeweler, in the City of Montreal, and bought a diamond ring for which he paid the sum of $250 in five dollar bills of the Bank of Montreal.

This fact is testified to in an affidavit made by one Louis Bessette (Rec. 11). There is no other evidence, written or oral, tending to show that the defendant made any attempt to dispose of any bills of the bank in the City of Montreal.

(3) That some of the bills so paid for said ring were bills that were stolen form the bank at New Westminster on the occasion of the burglary above referred to.

(4) That one George Wakefield (said to have several aliases) did at two different places and two different times, in said City of Montreal and in said month of February, 1915, dispose of, or attempt to dispose of certain bills of said Bank of Montreal,

some of which were bills that were stolen on the occasion of said burglary.

The oral evidence taken before the commissioner in Chicago tended to establish the following three classes of facts, namely:

(1) That the defendant and Wakefield were seen together by detectives in Montreal and in places near to Montreal, and close to the places where the attempts were made to dispose of said bills as aforesaid, about the times that the affidavits above referred to showed that such attempts were made.

(2) That, immediately after these occurrences in Montreal, the defendant and Wakefield came to Chicago, and that each of them there tried to dispose of certain bills of the Bank of Montreal. There was some evidence tending to identify some of the bills, which Wakefield tried to dispose of in Chicago, as bills that were stolen on the occasion of the burglary.

(3) That, during the summer preceding the incidents in Montreal above referred to, defendant had been living in Chicago, and had there tried to dispose of some of the bills that were stolen from the bank at New Westminster on the occasion of the burglary (testimony of Fekete, Rec. 22-23, and of Kennedy, Rec. 26). It does not appear quite clearly from the abstract of the testimony of the witness Kennedy that the bills referred to in the latter part of his testimony, and there identified as being "numbers that come within this card," were the bills passed by Bingham in the previous summer, which bills were not produced at the hearing. But we apprehend that this will not be disputed by counsel for appellee.

For assignment of errors and specification of precise grounds of illegality of imprisonment, relied on below and to be relied on here, see record 31 and 4-5.

BRIEF.

In order to make out a case for international extradition, under a treaty with a foreign state, it must appear:

1. That the party sought to be extradited is charged with having committed an act which is:

(a) punishable as a crime under the law of the country seeking to extradite;

(b) punishable as a crime under the law of the country from which extradition is sought;

(c) extraditable as a crime under the terms of a treaty between the two countries.

2. That, from evidence, competent under the treaty and the provisions of the federal statute, there is probable cause for believing that the party charged has in fact committed the crime he is so charged with, and has committed it in the jurisdiction to which it is sought to extradite him.

3. That the party charged with the commission of such crime is a fugitive from the justice of the state seeking extradition, in the sense at least:

(a) that he was in the state seeking extradition at the time the crime charged was committed there;

(b) that he is in the state from which extradition is sought at the time of the application for such extradition.

Citation of authority in support of these propositions is hardly necessary. The provisions of the treaties with Great Britain, and of the act of congress passed in pursuance of, and for the purpose of carrying into effect, these provisions are familiar to the court.

See, however, the following cases:

Wright v. *Henkel,* 190 U. S. 40 (p. 61);
Terlinden v. *Ames,* 184 U. S. 270;
Ex parte Reggel, 114 U. S. 642;
Roberts v. *Riley,* 116 U. S. 80;
McNichols v. *Pease,* 207 U. S. 100;
McNamara v. *Henkel,* 226 U. S. 520 (p. 523).

ARGUMENT.

In the present case, it is doubtful if any one of the three requirements stated under No. 1 above is complied with. It is certain that the requirement stated under No. 2 is not complied with. Of the two requirements stated under No. 3 above, one is complied with and the other is not.

Objections based upon requirements Nos. 1 and 3 may be disposed of briefly as being technical relatively to the objection based upon requirement No. 2. In this argument, we lay our main stress upon the failure to comply with requirement No. 2, which goes to the merits.

As to No. 1:

The offense charged in the complaint filed and in the warrant issued in Montreal is that of receiving *and* retaining in his possession money, etc. The expert opinion attached to the papers sent from Montreal sets out the sections of the Canadian statute relied on. The offense of which it is sought to convict in the present case is there defined as, "receiving *or* retaining in one's possession money obtained by any offense, etc."; and in the second section quoted, the offense is quoted as "receiving *or* retaining in his possession, any post letter bag, or any chattel, money or valuable security, parcel, or other thing, the stealing whereof is hereby declared to be an indictable offense, knowing the same to have been stolen." The corresponding provision of the Illinois law, and the only provision covering the class

of offense charged, provides that, "every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy, receive or aid in concealing goods * * * or property obtained by robbery or burglary, knowing the same to have been so obtained, shall be imprisoned, etc."

Jones & Addington, Illinois Statutes, Vol. 2, p. 2141.

The only provision of the treaties with Great Britain which could be construed as covering the class of offense here charged is that contained in the 3rd section of the first article of the Blaine-Pauncefote treaty of 1889, by which receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained is made an extraditable offense.

The Montreal warrant and the complaint filed by the British consul in Chicago charge the offense as "receiving *and* retaining in his possession money to the amount of $1,500."

The court will note that the specification of the crime as charged in the Montreal complaint and the Montreal warrant and in the complaint filed by the consul in Chicago does not follow the wording of the definition either in the Canadian statute, or in the Illinois statute, or in the treaty. The Canadian statute treats the offense of receiving and the offense of retaining as distinct offenses, and connects them with the disjunctive "or." The complaints made against the defendant in Montreal and Chicago treat the two acts as together constituting

one offense, and connects them with the conjunctive "and."

While it may be true, in a certain sense, that receiving with guilty knowledge implies retaining with guilty knowledge, it is certainly not true that retaining with guilty knowledge implies receiving with guilty knowledge. A party may receive goods in entire good faith, and afterwards acquire knowledge of such goods having been stolen, and then retain them with the guilty knowledge.

It is even more obvious that retaining with guilty knowledge at a certain place does not necessarily imply receiving with guilty knowledge at that place; or, indeed, receiving at that place at all.

In the present case the evidence does tend to show that the defendant had the goods in his possession (*i. e.* retained them) at Montreal and attempted to dispose of them there. It does not in the smallest degree tend to show that he received them in Montreal, or anywhere else in Canada.

If it be said that the offense charged includes the offense specified in the treaty, and something more —that receiving and retaining includes receiving— the answer is obvious. The defendant can only be extradited for the crime with which he is charged. If the charged crime be not extraditable under the treaty, he cannot be extradited for some other crime which is extraditable. The practice of extraditing a man for one crime, and then trying him in the country to which he is extradited for a lesser crime, upon the theory that the lesser is included in the greater, has been expressly condemned by this court.

U. S. v. *Rauscher*, 119 U. S. 407;
Johnson v. *Brown*, 205 U. S. 309.

The British consul might have amended the form of his complaint before the commissioner, and procured the amendment of the Montreal warrant, so as to charge the crime in accordance with the definition in the treaty, when the discrepancy between the form adopted and the form of the definition in the treaty was called to his attention. He did not do so. It is too late for him to do so now; he must stand or fall here upon the record made.

The reason which caused the Canadian officers and the British Consul to charge the crime in the way they do charge it, and to refuse to amend the charge as so made, is sufficiently obvious. The treaty provides (Blaine-Pauncefote Treaty of 1889, Art. III) that "no person surrendered, etc., shall be tryable or be tried for any crime or offense * * * other than the offense for which he was surrendered."

They have evidence tending to show that the defendant did in Montreal in the month of February last commit the offense of having in his possession and trying to dispose of stolen property, knowing the same to be stolen. They have no evidence tending to show that he did then, or at any other time, in Montreal, or anywhere in Canada, receive stolen property, knowing the same to be stolen. If they are tied down to the offense, as defined in the treaty, their time, labor and expense in getting the defendant extradited will be thrown away. Therefore, they naturally try to include in their charge an offense, not extraditable under the terms of the treaty, in order that they may be able to try him for that offense without violating the provision above

quoted, and so have some chance of convicting him with the evidence at their disposal.

As to No. 3:

For reasons which are stated below the evidence in this case fails to raise any presumption that the defendant was in Canada at all at the time he committed (if he did commit) the extraditable offense of receiving stolen money, knowing it to be stolen. It, therefore, fails to show that he is a fugitive from justice in the sense in which that fact must be shown in international extradition. The British Consul in his complaint expressly alleges that the defendant is a fugitive from justice from the District of Montreal. This is a material allegation and the consul was well advised in making it a part of his complaint. He is bound to show probable cause for believing that the defendant is in fact a fugitive from justice, in the sense above defined, and in respect of a crime which is extraditable. This he has wholly failed to do.

As to No. 2:

In arguing that the evidence in this case does not justify extradition, we are here confined within very narrow limits. This court has repeatedly decided that if there is any competent evidence tending to show that the accused party has committed, in the jurisdiction to which extradition is sought, an extraditable offense, the question of the sufficiency of the evidence cannot be gone into on an application for a writ of *habeas corpus*.

The cases in which this has been decided are familiar to the court and will no doubt be cited by

counsel on the other side. One of the most recent of them is *McNamara* v. *Henkel,* 226 U. S. 520, 523, where the rule is precisely stated and the earlier authorities are collected. From these cases it appears that, in order to win upon the ground now being argued, we must show that there is no evidence tending to show that the defendant was guilty anywhere in Canada of the extraditable offense of receiving stolen money knowing it to be stolen.

But, it is to be borne in mind, this does not mean that one piece of evidence, offered on behalf of the demanding government, can be isolated and considered apart from the rest of the evidence offered by it for the purpose of enabling the court to say that there is some evidence tending to show that the extraditable crime was committed in the jurisdiction to which extradition is sought. For example, in the present case, there is evidence tending to show that in the month of February, 1915, the defendant used some of the stolen bills to pay for a ring in Montreal. Counsel for appellee will claim here, as they claimed below, that this is in itself sufficient to give rise to a presumption that the defendant received these bills in Canada some time between the date of the burglary (September, 1911) and the date of the attempt to dispose of some of the stolen bills. We dispute this claim; but, conceding it for the purpose of the point now being made, it by no means follows that any such presumption arises, when we take into account certain other evidence, also offered by the demanding government, tending to show that the defendant, previous to his going to Montreal in February, 1915, had some of the

stolen bills in his possession while in Chicago, and had tried to dispose of them there. The presumption, if it arises at all, obviously depends upon the assumption that it appears from demandant's evidence, taken as a whole, that Montreal was the first place, in order of time, in which the defendant is shown to have had in his possession any of the stolen bills.

The objection to the competency of the evidence offered by the demanding government is relatively technical. This objection was fully argued below. We shall dispose of it briefly here.

As above pointed out, the only evidence tending to show that defendant was guilty in Montreal of the offense even of retaining stolen property, knowing it to be stolen, was the affidavit of Bessette sent on with the papers from Montreal. This was an *ex parte* affidavit taken in the absence of the defendant, and as to which he had no opportunity of cross-examination. The Webster Ashburton Treaty of 1842 provides (Art. X) that extradition shall only be had "upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension *and commitment for trial,* if the crime or offense had been there committed."

Some of the treaties have this provision; some do not have it. Certainly, under the practice which obtains in Illinois, an *ex parte* affidavit taken in the absence of the defendant could not be used so as, by itself, to form ground for his commitment for trial for the offense charged. It might be used against him on an application for a warrant for his

arrest; and, indeed, the common practice there, as elsewhere, on such an application is to grant the warrant for arrest on an *ex parte* deposition or affidavit.

The Federal Statute provides that

> "depositions, warrants and other papers shall be received and admitted as evidence on such hearing * * * if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomat or consular officers of the United States resident in such foreign country shall be proof that any deposition, warrant, or any other paper * * * is authenticated in the manner required by this act."

Cases were cited in the argument below in which the federal courts have decided that, if this requirement of the statute be complied with, *ex parte* evidence is competent. But, before we can regard these cases as ruling in this case, we must be sure that the treaties in question in these cases contained no such clause as that quoted above; or that, under the practice in the place where the fugitive was found, *ex parte* affidavits were admissible against him on an application to commit him for trial.

Coming now to the merits and to the argument upon which we mainly rely:

The evidence relied on, assuming it to be competent, raises no presumption that the defendant committed anywhere the offense of receiving stolen property, knowing it to be stolen (the offense specified in the treaty); and certainly it raises no pre-

sumption that the defendant committed this offense in Montreal, or anywhere in the Dominion of Canada.

The commissioner held that the fact of possession, even so long a time after the burglary, taken in connection with the other facts of the case, raised a presumption that either the defendant was a party to the burglary, or afterwards obtained possession of the bills with guilty knowledge. We dispute this: but assuming it to be so, that does not make out a case for extradition. If they were charging complicity in the burglary their case would be much stronger. Then, if it were held that possession so long after the theft created a presumption of guilt, such a presumption would necessarily be a presumption of crime committed in Canada, since the burglary was committed there. But their charge is receiving with guilty knowledge; and there is certainly no doctrine of the law of probabilities which says that possession by a man during a visit of a few days to Montreal of goods that were stolen more than three years previously in British Columbia makes it more probable that he received the goods in Canada than that he received them in the United States.

There is considerable contradiction between the decisions in the various states on the question whether the mere fact of a man having in his possession, and seeking to dispose of, stolen property, can ever give rise to the presumption that he received it knowing it to be stolen. Some of the states hold that it never can.

Am. & Eng. Encyc. of Law, 2nd Ed., Vol. 24, p. 51 (and cases cited in note 6).

New York appears to have held in one case that possession of stolen goods may give rise either to the presumption that the party having the goods is the thief or that he received them knowing them to be stolen.

People v. *Weldon,* 111 N. Y. 569.

The doctrine in Illinois (which must rule here) is that proof of possession of stolen goods, shortly after the commission of the theft, may give rise to the presumption that the party having the goods is the thief; but cannot, by itself, give rise to the presumption that he received the goods knowing them to be stolen. But, if the party denies the theft, and fails to give any satisfactory explanation of how the goods came into his possession, such possession, considered in connection with these other facts, may give rise to the presumption that he received the goods, knowing them to be stolen; and the federal rule seems to be substantially the same.

Gunther v. *People,* 139 Ill. 526;
McNamara v. *Henkel,* 226 U. S. 520 (pp. 524-5).

In order to give rise to any such presumption the possession must be shown to have been shortly after the theft.

Huggins v. *People,* 135 Ill. 243;
Gunther v. *People,* 139 Ill. 526;
Watts v. *People,* 204 Ill. 233.

In the first case the words used by the court are "almost immediately after, etc." (p. 246); in the second case the words used are "recently stolen" (p. 531); and in the third case the words are "immediately after, etc."

Where the charge is for receiving (the only extraditable offense suggested by this charge and evidence), as distinguished from retaining or aiding in concealing, the evidence must also tend to show a guilty knowledge *at the time of the act of receiving.*

Huggins v. *People,* 135 Ill. 243 (p. 246).

Conceding, however, that the evidence did furnish probable cause for believing that the defendant was guilty somewhere of the offense of receiving stolen money, knowing it to be stolen, it certainly did not furnish probable cause for believing that he had been guilty of this offense in Montreal or anywhere in the Dominion of Canada. And, for reasons above suggested, this would be true even if the record did not contain the evidence tending to show that the defendant had been in possession of and had tried to dispose of some of the stolen bills in Chicago, before he tried to dispose of others of these bills in Montreal.

We again call attention to the fact that the consul does not in his complaint allege that the offense was committed in Canada. The consul, no doubt, has a conscience and he was reluctant to swear, even on information and belief, to a fact as to which he knew absolutely nothing.

In the court below the appellee sought to meet the argument here made by citing a number of cases which involved no question of national jurisdiction, but which merely involved the question of the proper venue or place of trial, where there was no question as to the country in which the crime had been committed. But the question here raised is by no means

merely a question of venue. When extradition is asked for by a foreign country under a treaty, the fact that the charged crime was committed in the country to which extradition is asked is fully as fundamental and essential a fact as the fact that the charged crime was committed at all. Evidence which makes it probable that an extraditable offense was committed in the United States is so far from furnishing ground for extradition to Canada that it furnishes conclusive ground for refusing such extradition.

Some of the authorities on venue in criminal cases which were cited below, and which will no doubt be cited here, seem to go so far as to say that if a party, even a considerable time after property has been stolen, is shown to have been in possession of, and to have tried to dispose of such property at a certain place, this fact alone may give rise to a presumption that he received such property, with a guilty knowledge, *at that place.* They cited no Illinois authorities for this doctrine, and the rule contended for seems to be inconsistent with the doctrine affirmed in the Illinois cases above cited. But, conceding for the purpose of the present argument that this is the correct rule, even that does not help the appellee in the present case. The cases referred to go upon the principle that, in view of the difficulty of showing where the defendant did in fact receive the stolen property, he may fairly be presumed to have received it where he is first shown to have been in possession of it. But here the place at which the defendant is first shown to have been in possession of the stolen money is Chicago. If

there were any technical rule of evidence which affirmed that the facts shown by the evidence in the present case, as summarized at the end of the foregoing statement, gave rise to the presumption that the defendant had received the stolen bills in Canada, such a rule would be little, if at all, short of an insult to common sense. But there is no such rule.

It is hardly necessary to anticipate and answer the argument that the bills disposed of in Montreal were not the identical bills previously disposed of in Chicago; that, therefore, two distinct and contradictory presumptions as to the place of receipt may arise on the evidence; and that it may be presumed that the bills disposed of in Chicago were received in Chicago and that the bills disposed of in Montreal were received in Montreal, although the evidence tended to show that both sets of bills formed part of the money that was taken from the bank at the time of the burglary. It will be time enough to answer this argument if and when it is made.

In the case of *Gluckman* v. *Henkel*, in 221 U. S. 508 (p. 512), this court speaking through Mr. Justice Holmes, uses this language:

> "It is common in extradition cases to attempt to bring to bear all the factitious nicities of a criminal trial at law. But it is a waste of time. For, while, of course, a man is not to be sent from the country merely upon demand or surmise, yet, if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender."

This dictum is often cited by counsel opposing applications for writs of *habeas corpus* in extradition cases. It is often interpreted and applied as meaning that, if a foreign government, in support of a request for extradition, offers evidence making it reasonably probable that the party sought to be extradited has, in the jurisdiction to which extradition is asked, committed *some* crime for which he ought to be tried, a case for extradition is made out. Possibly, the words used may be fairly open to this interpretation; but we submit that this cannot be what the court meant to convey. We submit that what the court meant to convey may be expressed more precisely by adding a few words to the language used so as to make it read as follows:

> "If there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty of an extraditable offense, committed in the jurisdiction to which extradition is asked, as to make it proper that he should be there tried for that offense, good faith to the demanding government requires his surrender."

If this correctly expresses what the court meant to convey, and if this dictum is to be accepted as the test in the present case, then we are unable to see how the court can conclude that extradition ought to be allowed.

We submit that to extradite the defendant for the extraditable crime which comes nearest to the crime charged, upon the evidence here relied on, would be to "send him from the country merely upon demand or surmise." We submit that there is not such reasonable ground for believing him to have

committed this crime in Canada as to make it proper that he should be tried there. It is, in our view, absolutely out of the question that he could be convicted of the crime of having, in the District of Montreal or anywhere in Canada, received stolen property, knowing it to be stolen, upon the testimony here relied on.

For all which reasons, respectfully submitted, this court is asked to reverse the judgment of the court below, and to remand the case to that court with directions to issue the writ of *habeas corpus* as prayed.

William Dillon

Counsel for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915

NO. 592.

JOHN HINGHAM, *Appellant*,

vs.

JOHN J. BRADLEY, *United States Marshal for the Northern District of Illinois.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF ON BEHALF OF APPELLEE

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BRIEF ON BEHALF OF APPELLEE.

STATEMENT.

The order of the District Court of the United States for the Northern District of Illinois, from which this appeal was taken, denied an application for writ of habeas corpus. The appellant is detained pending his extradition to Canada, a warrant for which has been duly issued by the Secretary of State.

It appears that in September, 1911, $271,721 was stolen from the Branch of the Bank of Montreal, located at Westminster, British Columbia, and that in February, 1915, John Bingham, alias John Biglow, alias J. C. Billings, purchased in Montreal, Canada, a diamond ring with some of the stolen bills, and, with a confederate, disposed or attempted to dispose of a quantity of the stolen money in Montreal and in Chicago.

In the complaint filed with the United States Commissioner at Chicago, dated April 3, 1915, the British Consul General stated on information and belief that John Bingham had been guilty of the crime of "receiving and retaining in his possession money to the amount of fifteen hundred dollars ($1,500.00) to-wit, bills of the Bank of Montreal and the property of the said Bank of Montreal, * * * then and there knowing the same to have been stolen." (Rec. p. 7.)

On the same day a warrant was issued for the apprehension of Bingham, and he was accordingly arrested and taken into the custody of the United States Marshal. (Rec. p. 27.)

Thereafter a hearing was had before the United States Commissioner, who, in his mittimus dated May 19, 1915, stated that John Bingham, having on or about the 10th day of February, 1915, within the jurisdiction of the Kingdom of Great Britain, to-wit, Canada, "committed the crime of receiving and retaining in his possession, money * * * knowing that the said bills had been stolen;" and the said crime being embraced in an extradition convention between the Governments of the United States and Great Britain; and it appearing to the Commissioner that there were sufficient grounds to believe said Bingham guilty of the crime as charged, the Marshal was directed to commit Bingham to abide the order of the Secretary of State. (Rec. pp. 6, 7.)

The Commissioner on June 8, 1915, certified the proceedings to the Secretary of State. (Rec. p. 27.)

The appellant filed his petition for writ of habeas corpus on June 22, 1915 (Rec. p. 1), and the same was thereafter denied and the petition therefor dismissed. (Rec. p. 29.)

THE EVIDENCE PRESENTED BEFORE THE COMMISSIONER.

Depositions and other documentary evidence, as well as oral testimony, were produced at the hearing before the United States Commissioner.

In the deposition of William H. G. Phipps, an official of the Bank of Montreal, it was stated that in September, 1911, the sum of $271,721 was stolen from the New Westminster Branch of the Bank of Montreal; that among the bills so stolen were a number of five-dollar bills of the said Bank of Montreal; and that among these were bills bearing the numbers specifically designated. (Rec. pp. 14, 15.)

The deposition of Louis E. Bessette set forth the employment of deponent by a jeweler in Montreal, and recited that on February 10, 1915, Bingham purchased from him a diamond ring, paying therefor $250, of which sum $245 was in five-dollar bills of the Bank of Montreal bearing the same numbers as some of those referred to in the deposition of William H. G. Phipps. (Rec. p. 11.)

In the deposition of Isidore Ortenberg, of Montreal, it was stated that one George Wakefield on February 9, 1915, purchased travellers' cheques with some of the stolen bills (Rec. p. 12), and Luigi Rocca, also of Montreal, deposed that said Wakefield, on February 10, 1915, exchanged some of the stolen money for American currency. (Rec. p. 13.)

The testimony of Detectives Lord and Curran tended to show that Bingham and Wakefield operated together in Montreal and also in Chicago (Rec. pp. 20, 21, 22); and the testimony of other witnesses recited the circumstances under which Bingham and Wakefield disposed of Canadian bills in Chicago. Joseph Fekete,

of Chicago, testified that he changed American for Canadian money at Bingham's request, and deposited the Canadian bills in a Chicago bank (Rec. p. 23), and the cashier of the bank testified that among the Canadian bills deposited by Mr. Fekete there were found several bills bearing numbers which were mentioned on the card sent to the Bank by the Pinkerton Detective Agency with reference to the stolen money. (Rec. p. 26.)

Other documentary evidence was presented to the Commissioner, including properly certified copies of the following: The information and complaint before the Police Magistrate in Montreal in which it was charged that appellant "did receive and retain in his possession money to the amount of fifteen hundred dollars * * * then and there knowing that the said bills had been stolen" (Rec. p. 18); the warrant thereupon issued by the Police Magistrate for the apprehension of the accused (Rec. p. 18); and also the affidavit of J. T. Hackett, an advocate in Montreal, stating that in his opinion Bingham had committed an indictable offense by "receiving and retaining in his possession" the stolen bills and setting forth the applicable provisions of the Canadian Statutes. (Rec. p. 19.)

STATUTORY AND TREATY PROVISIONS.

The Criminal Code of Canada, R. S. C. 1906, ch. 146, provides as follows:

> Sec. 399. "RECEIVING PROPERTY OBTAINED BY AN INDICTABLE OFFENCE. Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who receives or retains in his possession anything obtained by any offence punishable on indictment,

or by any acts wheresoever committed, which, if committed in Canada, would have constituted an offence punishable upon indictment, knowing such things to have been so obtained. 55-56 V., c. 29, s. 314."

Sec. 400. "RECEIVING STOLEN PROPERTY. Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. 55-56 V., c. 29, s. 315."

Section 239 of the Criminal Code of Illinois is as follows:

"Every person, who, for his own gain, or to prevent the owner from again possessing his property, shall buy, receive or aid in concealing stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall be imprisoned," etc.

By the Treaty of 1889, between the United States and Great Britain, provision is made for the extradition of persons charged with "receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained."

ARGUMENT.

There is in the record merely a general assignment of errors, in which the District Court is charged with error in denying the application for writ of habeas corpus, in dismissing the petition, and in not directing the writ to issue. (Rec. p. 31.)

The grounds stated in the petition as the basis for the claim that appellant's detention is illegal are, in substance, that the complaint of the British Consul General did not charge that the offence was committed in Canada; that the offence charged is not extraditable; that the proof is insufficient; and that improper and incompetent evidence was admitted.

In the case of McNamara vs. Henkel, 226 U. S., 520, it appeared that writs of habeas corpus and certiorari were dismissed by the District Court, whereupon an appeal was taken. Mr. Justice Hughes, delivering the opinion of this court, said:

> "The question simply is whether there was any competent evidence before the Commissioner entitling him to act under the statute. The weight of evidence was for his determination. The statute provides that if on the hearing, 'he deems the evidence sufficient to sustain the charge,' he shall certify the same to the Secretary of State and issue his warrant for the commitment of the accused pending surrender according to the stipulations of the treaty. Rev. Stat., §5270. Under this provision, the rule is well established that if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offence charged is within the treaty, and the magistrate has before him legal evidence on

> which to exercise his judgment as to the sufficiency of the facts to establish the criminality of the accused for the purposes of extradition, his decision can not be reviewed on habeas corpus."

To state the case at bar in the manner most favorable to the appellant: The information filed before the Police Magistrate in Montreal and the complaint of the British Consul General charged Bingham with the offence of receiving *and* retaining money, knowing it to have been stolen, and the United States Commissioner found the accused guilty of the offence charged. The Canadian Statutes provide for the punishment of one who receives *or* retains money, knowing it to have been stolen. The extraditable offence described in the Treaty between the United States and Great Britain, and the crime punishable under the Illinois Statute, is the offence of *receiving* money, knowing it to have been stolen. The evidence produced before the United States Commissioner proved that some of the stolen money was in the possession of Bingham in Montreal and in Chicago, the circumstances clearly indicating that during the period of his possession he knew that it had been stolen.

Counsel for appellee are not at this time advised of the points to be specifically urged in this Court in behalf of appellant, and it is difficult to conceive any reasonable grounds upon which appellant can further resist extradition. But this argument may be directed to the contentions heretofore advanced in Bingham's behalf, namely, to the effect, first, that the ex parte affidavits introduced in evidence were not admissible; second, that evidence of Bingham's operations in Chicago was inadmissible; third, that the evidence fails to show a guilty knowledge; and fourth, that the evidence fails to show that the money was received by Bingham in Montreal.

FIRST, WITH RESPECT TO THE ADMISSIBILITY OF THE EX PARTE DEPOSITIONS.

The objection to the introduction of the ex parte affidavits appearing in the record is not well taken. This method of proving the probable guilt of the accused is well established, and in many cases is the only practicable method.

In the case of Rice vs. Ames, 180 U. S., 371, 375, the Court said:

> "Rev. Stat., sec. 5271, makes special provision that 'in every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants, or other papers offered in evidence shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence,' of which authentication the certificate of the diplomatic or consular officer of the United States shall be sufficient. This obviates the necessity which might otherwise exist of confronting the accused with the witnesses against him."

This language is quoted in Yordi vs. Nolte, 215 U. S., 227, 231.

In Ex parte Schorer, 197 Fed., 67, it was stated:

> "When the documentary evidence has been authenticated as required by the statute, it is admissible, leaving to the commissioner merely the question of determining the sufficiency of the evidence therein contained."

The following statement was made in Powell vs. United States, 206 Fed., 400:

> "It is advisable that certified copies of the foreign complaint and warrant be attached to and made a permanent part of the complaint; but it is sufficient if, as was done in this case, those documents, alleging positively the respondent's guilt, are presented to the commissioner with the complaint, and if depositions showing probable cause are produced at the hearing."

SECOND, WITH RESPECT TO THE ADMISSIBILITY OF THE TESTIMONY THAT BINGHAM AND WAKEFIELD OPERATED IN CHICAGO

The evidence is convincing that Bingham and Wakefield were operating together in Montreal and Chicago in such manner as to indicate that they were attempting to dispose of part of the stolen money, and that they knew it was stolen. Wakefield and Bingham having been engaged in a common enterprise, evidence against one is evidence against the other. The fact that under suspicious circumstances they attempted to dispose of this money in Chicago at the time in question is not, of course, evidence of their having possessed or disposed of the money in Montreal; but possession and disposition in Canada being otherwise shown, possession and disposition in Chicago is evidence that they had know-

ledge that the money disposed of in Montreal was stolen.

In Commonwealth vs. Phelps, 192 Mass., 591, the indictment was for receiving and aiding in the concealment of stolen goods. The court said:

> "Although possession out of the Commonwealth of goods stolen in the Commonwealth would not of itself warrant a conviction for receiving them and aiding in their concealment here, evidence of such possession would be competent against one accused of that offence."

It can not but be concluded, therefore, that the testimony in question was admissible against Bingham.

THIRD, WITH RESPECT TO BINGHAM'S KNOWLEDGE THAT THE MONEY WAS STOLEN.

It is respectfully submitted that the evidence is sufficient to warrant the finding of the Commissioner that Bingham knew the money was stolen. In all prosecutions for receiving stolen goods, the proof of guilty knowledge must, in the very nature of things, be in the form of presumptions drawn from all the attendant circumstances, and the following extracts from the cases sufficiently illustrate the rule:

Huggins vs. The People, 135 Ill., 243:

> "It rarely happens that direct and positive proof of the guilty knowledge is attainable, unless the thief be produced for that purpose. It is therefore, ordinarily, to be shown by proof of attending facts and circumstances, from which by the common understanding and experience

of men, the inference of the fact arises. Thus, numerous circumstances may be shown, as, that the purchase was for much less than the real value; that the defendant denied that the property was in his possession, or concealed it; his failure to make reasonable explanation; the evil reputation of the person from whom purchased or received, and the like. (Bishop on Crim. Proc., 991; Wharton on Crim. Law, 983, and cases cited.) The knowledge of the theft need not be that actual or positive knowledge which one acquires by personal observation of the fact. 'It is sufficient if the circumstances were such, accompanying the transaction, as to make the prisoner believe the goods had been stolen.' (Bishop on Crim. Law, 1138; Wharton on Crim. Law, 984.) If he purchase or receive the goods with a belief that they are stolen, he will be held to have had that knowledge required by the statute."

McNamara vs. Henkel, 226 U. S., 520, 524:

"It is objected that while possession of property recently stolen may be evidence of participation in the larceny, the apparent possession of the automobile by the appellant affords no support for a conclusion that he committed the burglary, the crime with which he was charged. The permissible inference is not thus to be limited. The evidence pointed to the appellant as one having control of the car and engaged in the endeavor to secure the fruits of the burglarious entry. Possession in these circumstances tended to show guilty participation in the burglary. This is but to accord to the evidence, if unexplained, its natural probative force."

Ex parte Glucksman, 189 Fed., 1016:

> "As before observed, this is not a trial upon indictment, but a preliminary proceeding, the object of which is to bring the offender before a court having jurisdiction to try and punish him. Proof that the prisoner uttered a single forged note or bill of exchange is sufficient to justify his extradition."

In Fulton vs. State, 8 Ala. App., 257, 62 So., 959, defendant was convicted on an indictment charging him with buying, receiving, concealing or aiding in concealing one diamond shirt stud. On the question of guilty knowledge, the court said:

> "Possession of goods, proved to have been recently stolen, imposes on the possessor the onus of explaining how he came into possession of them; and, if he fail to make a reasonable explanation, it raises a presumption of guilt which will justify the jury in the conviction of such person."

In the case of James vs. State, 8 Ala. App., 255, 62 So., 897, a conviction under a similar indictment was held good on evidence that the warehouse receipt for the stolen cotton was found in possession of the accused.

FOURTH, WITH RESPECT TO THE CONTENTION THAT THE EVIDENCE FAILS TO SHOW THAT THE MONEY WAS RECEIVED BY BINGHAM IN MONTREAL.

This appears to be the principal contention advanced on behalf of the accused. It is a point which is exceed-

ingly technical in its nature, and reliance is placed upon it by reason of the fact that the crime is described in the Canadian Code differently from the manner of its description in the Treaty of 1889 and in the Illinois Code. It is suggested that the Canadian Statute contemplates two distinct offences, stating them to be "receiving or retaining" stolen money; that the treaty provision and that of the Illinois Code have regard to the single offence of "receiving" stolen property; that proof of Bingham's possession of the stolen money in Canada might show the distinct offence of "retaining" described by the Canadian Statute, but that this offence is not that described in the treaty; that the fact might well be that one could receive money and thereafter, while retaining the same, learn of its having been stolen; and that the failure to show actual receipt in Canada of the money, then knowing that it had been stolen, rendered it impossible to return him to Canada to be tried for the offence of retaining the money in question knowing it to have been stolen.

When this case was under consideration by the United States Commissioner he had in mind the point urged in behalf of the accused, and he said:

> "There is a difference between the wording of the statute of the demanding government and the wording of the statute of Illinois, but the meaning of both statutes is the same, namely, that he who receives and keeps stolen property, knowing the same to be stolen, is guilty of an indictable offence."

It is admitted that there is no positive proof that the money was received in Montreal. It must be borne in mind, however, that an extradition proceeding is not a

trial, and all that is necessary to show to warrant extradition is probable cause that the person accused committed the offence.

This court said in the case of Glucksman vs. Henkel, 221 U. S., 508, 512:

> "It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time. For, while, of course, a man is not to be sent from the country merely upon demand or surmise, yet, if there is presented even in somewhat untechnical form according to our ideas, ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender."

It is further respectfully submitted that in an extradition proceeding it would be unreasonable to demand further or higher proof of any of the elements entering into the offence. When consideration is given to the cases wherein there was an alleged insufficiency of proof as to the venue of the crime, and wherein, under circumstances analogous to those in the case at bar, juries were allowed to find the venue to be as charged, it is seen that meeting the appellant on his own ground, and assuming for the moment that in the case under discussion, the *receiving* must be shown to have taken place in Montreal, his contention falls. It is manifestly impossible to prove by direct evidence the act of receiving stolen goods. Like guilty knowledge, the courts hold that a jury may find the venue from the presumptions to be drawn from all the evidence. The following extracts from the cases illustrate the views entertained by various courts in cases of trials by jury—not preliminary hearings—on this point.

In Heard vs. State, 121 Ga., 138, the accused was convicted of altering a public school license. The court said:

> "The only question raised by the motion for a new trial which requires treatment here is as to whether the venue of the offence charged was sufficiently proved to warrant the conviction. It was uncontradicted that a teacher's license was altered, and that the altered instrument was uttered by the accused. The accused introduced no evidence, but relied on his statement, which was to the effect that the license in question was altered by some one else, and was used by him unconsciously through a mistake caused by the license becoming mixed with his papers. The license was uttered in Bryan County, but there was no evidence whatever as to where the actual alteration took place. The offence under consideration is statutory, and not subject to the general rules relating to forgery and uttering a forged instrument. Uttering a forged or altered teacher's license is not comprehended by the statute, the evil sought to be corrected being the actual forging or altering, or the procuring or aiding in the actual forging or altering. In the nature of things it is always difficult, and generally impossible, to prove the venue of the actual physical forgery or alteration of an instrument. The forger is usually a bird of passage and does not remain long in one place. He does not ply his trade in the open, and eyewitnesses to his unlawful acts are extremely rare. For these reasons it is essential, in order that justice may be done, and the guilty punished, that proof of the

venue be made by proof of circumstances, from which evidence it may be inferred. And it would seem only reasonable that evidence that a forged instrument was uttered in a given county would, in the absence of evidence to the contrary, warrant the inference by the jury that the forgery itself was committed in that county. Thus in United States vs. Britton, 2 Mason, 464, 24 Fed. Cas. No. 14,650, it was held: 'A check drawn in Philadelphia on Boston in favor of the prisoner, who was then in Philadelphia, and who produces the check altered in Boston, if there be no evidence that it was altered elsewhere, it is *prima facie* evidence that it was altered in Massachusetts, that being the first State where it was known to be altered.' See also Spencer vs. Commonwealth, 2 Leigh (Va.), 751; Henderson vs. State, 14 Tex., 503. In the present case there was evidence showing that at different times the accused had been in other counties than the one in which he was tried and in which the altered instrument was shown to have been uttered, but there was an entire lack of evidence as to where the actual alteration took place. Applying the principles already announced, we conclude that there was sufficient evidence to warrant the finding that the venue of the crime was in Bryan County. See in this connection Johnson vs. State, 62 Ga., 299; Long vs. State, 118 Ga., 319; 2 Bish Crim. Proc. (3d Ed.), Sec. 480."

Commonwealth vs. Phelps, 192 Mass., 591:

"This is an indictment in three counts for receiving and aiding in the concealment of stolen

goods. There was a verdict against the defendant on all of the counts. * * *

"Although possession out of the Commonwealth of goods stolen in the Commonwealth would not of itself warrant a conviction for receiving them and aiding in their concealment here, evidence of such possession would be competent against one accused of that offence. But assuming that the requests were intended to raise and did raise the question whether a guilty knowledge or belief first acquired outside of the State would warrant a conviction, we think that, if there was any evidence warranting such a contention, the matter was sufficiently covered by the charge. * * * We think it plain that the jury must have understood that in order to convict they must find that the defendant had acquired a guilty knowledge or belief when the goods first came into his possession, which was in this State or while they were in his possession subsequently in this State."

Wills & Conley vs. People, 3 Parker Cr. R., 473, 496:

"The plaintiffs in error were indicted and found guilty of feloniously receiving and having, in the city of New York, certain goods knowing that they were stolen. Crane, the owner of the goods, proved that they were stolen, * * *.

"A motion to dismiss the case, on the ground that it did not appear that either of the prisoners bought or received any of the property within the city of New York, was also properly overruled. The samples were received by Wills here from

Conley, after Conley had been absent but fifteen minutes to get them; that was evidence that he did not get them from Williamsburgh, but within the county of New York; and although the bulk of the articles was then in Williamsburgh, it was very probable that all were received here, and the bulk removed there for concealment, until the contrary should be proved. In this city was the prisoners' store, where they transacted their business in form, in loaning money on goods pledged. The house in Williamsburgh was only a place, apparently, for storing and concealing the goods."

Brown vs. State, 59 S. W., 1118:

"Appellant was convicted for the theft of a horse. * * *

"In motion for new trial appellant insists that the venue was not proven, in that the property was never shown to have been transported in Karnes County. An inspection of the statement of facts shows that Pullin testified that he arrested appellant near Kennedy, in Karnes County, Texas, some time in May, 1899; that witness was acting as deputy sheriff at said time, and at that time defendant had the saddle and horse in his possession. The sheriff testified that he received appellant from the custody of the deputy sheriff in Karnes County. Prosecuting witness testified that the animal found in the possession of appellant * * * was stolen from him in Lavaca County. We think venue was proven."

In the case of Baker vs. State, 58 Ark., 513, 25 S. W., 603, the appeal was from a conviction of receiving stolen property. The court, in passing on the question of whether the venue was proved as laid, said:

> "The appellant insists that the venue was not proved as laid in the indictment. This is the most difficult and troublesome question in the case. There does not seem to be any evidence that the appellant had the watch in his possession in Philips County, where he was indicted and tried, prior to the time he carried it back from Pine Bluff to Ready, the owner, in Helena, in said county. * * *
>
> "The section of the statute under which the defendant in this case was convicted reads as follows: 'Whoever shall receive or buy any stolen goods, moneys or chattels knowing them to be stolen, with intent to deprive the true owner thereof, shall, upon conviction, be punished * * *.'
>
> "Under the authorities quoted, if the jury believed from the evidence in this case—and they might have believed—that the appellant received the stolen watch in Clarendon on 24th February, and concealed the fact from Ready, the owner, knowing the property to be Ready's, with the intention of defrauding Ready into the payment of money to him by way of reward for the restoration of the watch, the offence of receiving stolen property was made out under the statute. And if the appellant returned to Phillips County with the stolen watch with a purpose to exact of Ready a reward for its return, and had the watch in Phillips County, with the intention of requiring

> Ready, as a condition to its return, to pay him money therefor, he was guilty, under the statute, the venue being thus proven. We are of the opinion that there was evidence from which these facts might have been found by the jury."

In the case of People vs. Cooper, 69 N. Y. S., 257, the accused was convicted of receiving stolen goods with knowledge that they were stolen. The court said:

> "It is insisted by the appellant that there was not sufficient evidence to warrant his conviction, because there was nothing to show either that he received the goods, or that he knew them to be stolen. It was conceded that a burglary had been committed. The overcoat which was pawned was shown to be one of the overcoats stolen at the time of the commission of the burglary. It was discovered in a pawnshop. There was testimony to the effect that the morning after the burglary the defendant had the overcoat in his possession at a time when there was trouble between several persons in regard to the disposition of the things which had been stolen, and at the time when the witness who testified to the fact of the trouble learned that the burglary had been committed. She said she did not hear of any burglary being committed until the following morning, when these men were arguing about the goods. The defendant conceded that immediately after the trouble he and another man went to the pawnshop, and that the goods were pawned; and the evidence tended to show that he pawned them. That was sufficient to warrant the jury in finding that he actually received the goods, knowing them

to be stolen, and therefore the evidence was sufficient to make out the case.

"It is further complained that the case is defective because it does not appear that the crime was committed in New York county. The defendant sought to raise this point by a motion in arrest of judgment and by a motion for a new trial upon the ground that the evidence did not show that the crime was committed in the county of New York, as it was laid in the indictment. No such point was made until after the verdict of conviction had been rendered, and therefore it was not well taken within the case of Wagner vs. People, 41 N. Y., 684.

"Upon the whole case, we think that the defendant was properly convicted."

Under the evidence in the record, it is a fair presumption that the stolen money was received in Montreal, and this presumption is as strong as the presumptions of venue discussed in the cases above set forth. Particular attention is called to the case of United States vs. Britton, 2 Mason, 464, 24 Fed. Cas. No. 14,650, where it was held, in the language of the court:

> "A check drawn in Philadelphia or Boston in favor of the prisoner, who was then in Philadelphia, and who produces the check altered in Boston, if there is no evidence that it was altered elsewhere, it is *prima facie* evidence that it was altered in Massachusetts, that being the first State where it was known to be altered."

CONCLUSION.

It is respectfully submitted that the United States Commissioner was justified in finding appellant guilty of an extraditable offence, and that the good faith of the United States under its treaty with Great Britain demands Bingham's surrender for trial in Canada. The order of the District Court should be affirmed.

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BINGHAM *v.* BRADLEY, UNITED STATES MARSHAL FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 592. Submitted April 4, 1916.—Decided June 5, 1916.

This court will not presume that the demanding government will suffer a person surrendered pursuant to treaties of 1842 and 1889, with Great Britain to be tried for any offense other than that for which he is surrendered.

Where the commissioner had jurisdiction, the offense is within the treaty, and if he acts upon competent and adequate evidence, his finding cannot be reversed on *habeas corpus*.

One of the objects of § 5271, Rev. Stat., providing for admission in evidence in extradition proceedings of properly authenticated copies of depositions and proceedings, is to obviate the necessity of confronting the accused with the witnesses against him; and neither that section, nor Article X of the Treaty of 1842, should be so construed as to require the demanding government to send its citizens to the country where the fugitive is found to institute legal proceedings: such a construction would defeat the object of the treaty.

A fair observance of the extradition treaties with Great Britain requires in this case that the accused be surrendered, all the objections being technical; and, as the order was made by a commissioner having jurisdiction, on evidence furnishing reasonable ground for belief that the accused had committed a crime in Canada which is an offense within the treaty both there and in Illinois where he was found, it should be affirmed.

THE facts, which involve the validity of an order of an United States Commissioner holding a person for extradition under the Treaties of 1842 and 1889 with Great Britain, are stated in the opinion.

Mr. William Dillon for appellant.

Mr. Benjamin S. Minor, Mr. Almon W. Bulkley, Mr. Clair E. More, Mr. Hugh B. Rowland and *Mr. Colley W. Bell* for appellee.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is an appeal from a final order of the District Court denying an application for a writ of *habeas corpus* in an extradition case. The facts are to be gathered from the petition for the writ and the exhibits therein referred to and made a part of it, which include a sworn complaint by the British Consul General at Chicago, applying on behalf of the Government of the Dominion of Canada for the extradition of appellant to Montreal, certain *ex parte* affidavits taken in Montreal and a complaint made and warrant issued against appellant in that city, an abstract of the oral testimony taken before the United States Commissioner at Chicago, and the warrant of commitment issued by the Commissioner, under which appellant is held in custody.

The complaint of the Consul General sets forth on information and belief that appellant, in the month of February, 1915, was guilty of the crime of receiving and retaining in his possession money to the amount of $1,500 in bills of the Bank of Montreal, the property of that bank, knowing the same to have been stolen; that a warrant has been issued by the police magistrate of the City of Montreal for the apprehension of appellant for the crime mentioned; that appellant is guilty of the indictable offense of receiving money knowing it to have been stolen, and is a fugitive from justice from the District of Montreal, Province of Quebec, and Dominion of Canada, and is now within the territory of the United States; that the offense of which he is charged is an offense within the treaties between the United States and Great Britain; and that deponent's information is based upon duly au-

thenticated copies of a warrant issued by the police magistrate of Montreal and of the complaint or information upon which that warrant was issued, and upon certain depositions of witnesses submitted to be filed with the present complaint. The reference is to the Montreal affidavits, which set forth in substance that in the month of September, 1911, a branch of the Bank of Montreal at New Westminster, British Columbia, was broken into and a large sum of money ($271,721) stolen from the bank, including a considerable number of $5 bills of the Bank of Montreal, seventy-eight of these being identified by their numbers; that on February 10, 1915, in the City of Montreal, appellant purchased a diamond ring from one Eaves, a jeweler, and paid for it $250, of which $245 was composed of new Bank of Montreal $5 bills, more than thirty of these being identified by the numbers as among those stolen; that on February 9, 1915, one Wakefield purchased in Montreal some travelers' checks, paying for them in part with fifty new $5 bills of the Bank of Montreal, of which twenty or more were identified as being a part of the stolen money; and that on February 10, 1915, Wakefield procured from a firm of bankers in Montreal an exchange of Canadian bills for American currency, the exchange including fifty new $5 bills of the Bank of Montreal, of which fifteen or more were identified as being a part of those stolen.

Appellant having been apprehended, a hearing was had before the United States Commissioner, at which the above-mentioned documents were introduced and testimony was given tending to show that appellant and Wakefield were together in Montreal on the ninth and tenth of February, 1915, coöperating in the exchange of the stolen bills for travelers' checks and United States currency; and that on the evening of February 10 they left Montreal together in a manner indicating an intent to evade detection, and went to Chicago, where almost

immediately they began systematic efforts to procure the exchange of Bank of Montreal bills for United States currency.

The Commissioner deeming the evidence sufficient to sustain the charge, the warrant of commitment was issued, the proceedings and evidence being certified in due course to the Secretary of State, pursuant to § 5270, Rev. Stat.

Under the applicable provisions of our treaties with Great Britain (Treaty of Aug. 9, 1842, Art. X; 8 Stat. 572, 576; Treaty of July 12, 1889, Art. I; 26 Stat. 1508, 1509), there is included among the extraditable offenses that of "receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained."

In behalf of appellant it is objected that while the criminal code of Canada defines as indictable offenses (a) the receiving *or* retaining in possession anything obtained by any offense punishable on indictment, knowing it to have been so obtained, and (b) the receiving *or* retaining in possession any money or valuable security or other thing, the stealing whereof is declared to be an indictable offense, knowing the same to have been stolen, the offense charged in the complaint filed and in the warrant issued in Montreal and in the Consul General's complaint is that of receiving *and* retaining in his possession money, etc., knowing it had been stolen. The argument is that the Canadian statute treats receiving and retaining as distinct offenses, connecting them with the disjunctive "or," while the complaints treat the two acts as together constituting one offense. Properly interpreted, however, they charge the commission of both offenses; and if only one, that of receiving, etc., is extraditable by the treaty, this does not render appellant's detention unlawful, since it is not to be presumed that the demanding government will suffer him to be tried or punished for any offense other than that for which he is surrendered, in violation

of Article III of the Treaty of 1889. *Kelly* v. *Griffin*, *ante*, pp. 6, 15.

It is insisted that the Consul General's complaint does not allege that the offense was committed in Canada, that the evidence relied upon raises no presumption that appellant committed anywhere the offense of *receiving* stolen property knowing it to be stolen (the offense specified in the treaty), and that it raises no presumption that appellant committed the offense in Montreal or anywhere in the Dominion of Canada.

The criticism upon the complaint is unsubstantial. It is fairly to be inferred from what is stated that the crime was committed in Canada, and it is distinctly averred that appellant is a fugitive from justice from the District of Montreal, in that Dominion, and that the offense with which he is charged is an offense within the treaties between the United States and Great Britain. Besides this, it is stated that deponent's information is based upon authenticated copies of a warrant issued by the police magistrate of Montreal and of the complaint upon which that warrant was issued, and upon certain depositions submitted and to be filed with the present complaint; the depositions being those taken in Montreal. It is clear that the intent was to charge that the offense was committed in Canada.

As to the effect of the evidence: The Commissioner doubtless held that the fact of possession, taken in connection with the other facts of the case, raised a presumption either that appellant was a party to the burglary or that he afterwards obtained possession of the bills with guilty knowledge. Appellant disputes the inference, and, assuming it to be well founded, insists that there is nothing in the law of probabilities to sustain an inference that "possession by a man during a visit of a few days to Montreal of goods that were stolen more than three years previously in British Columbia makes it more probable

that he received the goods in Canada than that he received them in the United States." There is nothing in the evidence to require the inference that appellant was paying a brief visit to Montreal. It appears that he has a brother who is in business in Chicago, and that he himself was in that city in the summer of 1914, and, on three occasions, with intervals of several weeks, exchanged Canadian money there for United States currency. This is consistent with the inference that he was then exchanging part of the stolen money, but does not require the inference that he had a fixed place of abode in Chicago. The stolen bills that were in appellant's possession in Montreal in February, 1915, are not shown to have been removed from the Dominion after the time they were stolen from the bank in September, 1911. As it was a reasonable inference—they being "new bills"—that they had never before been used in exchange, and because so many of them were found together in the hands of appellant and his confederate three and a half years after the burglary, it was further inferable that they had been retained during the intervening period with the purpose of awaiting such opportunity for passing them as might come from relaxed vigilance on the part of the authorities; and since the Dominion of Canada is the natural and convenient market for bills of the Bank of Montreal, it was inferable that the bills had not been taken out of the Dominion since the time they were stolen; and, if not, it followed that appellant must have been within the Dominion when he received them. That they were received with knowledge that they had been stolen, might be inferred from the fact of the burglary coupled with the suspicious circumstances (only a part of which we have referred to) attending the efforts to exchange them for other forms of property.

The Commissioner deemed the evidence sufficient to sustain the charge (Rev. Stat., § 5270), and since he had jurisdiction of the subject-matter and of the accused, and

the offense is within the treaty, his finding cannot be reversed on *habeas corpus* if he acted upon competent and adequate evidence. *McNamara* v. *Henkel*, 226 U. S. 520, 523.

It is insisted that the Montreal affidavits, essential to show that the alleged offense was committed within the Dominion, were incompetent because taken *ex parte*, in the absence of appellant and without opportunity for cross-examination. The Treaty of 1842 provides in Article X that extradition shall only be had "upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offence had there been committed." Section 5271, Rev. Stat., as amended by act of August 3, 1882, §§ 5 and 6 (c. 378, 22 Stat. 215, 216), provides that any depositions, warrants, or other papers or copies thereof shall be admissible in evidence at the hearing if properly authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country, and that the certificate of the principal diplomatic or consular officer of the United States resident in the foreign country shall be proof of such authentication. The Montreal affidavits, complaints, warrant, etc., are properly authenticated in accordance with this provision. It is one of the objects of § 5271 to obviate the necessity of confronting the accused with the witnesses against him; and a construction of this section, or of the treaty, that would require the demanding government to send its citizens to another country to institute legal proceedings would defeat the whole object of the treaty. *Rice* v. *Ames*, 180 U. S. 371, 375; *Yordi* v. *Nolte*, 215 U. S. 227, 231.

All of the objections savor of technicality. And since the jurisdiction of the Commissioner is clear, and the evidence abundantly sufficient to furnish reasonable ground for the belief that appellant has committed within

the Dominion of Canada a crime that is an offense under the laws of the Dominion, as well as under those of Illinois (2 Jones & Add. Ill. Stat. Ann., § 3892), and is covered by the terms of the treaty, and that he is a fugitive from justice, a fair observance of the obligations of the treaty requires that he be surrendered. *Glucksman* v. *Henkel*, 221 U. S. 508, 512.

Final order affirmed.